



Ontario


BACKGROUND INFORMATION

GREEN PAPER ON SUNDAY AS A COMMON DAY OF REST & UNIFORM STORE HOURS

Provincial Secretary for Justice
December, 1973

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Green Paper

SUNDAY AS A COMMON DAY OF REST

AND

UNIFORM STORE HOURS

Honourable George A. Kerr, Q.C.,
Provincial Secretary for Justice.



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INTRODUCTION

The Government of Ontario has been considering proposals for legislation dealing with Sunday as a common day of rest and with uniform store hours across the province.

A substantial number of proposals and recommendations have been received -- some in favour of new legislation and some against. But wider public response remains a prerequisite for the government in its efforts to determine whether it should formulate legislation for submission to the Ontario Legislature.

This Green Paper outlines the policy alternatives the government is considering. It is intended to provide an opportunity for interested individuals and groups to consider the matter and, if they wish, to respond.

The Green Paper outlines issues and options. It is a brief survey of the questions involved and the possible courses of action.

A more comprehensive and detailed document on the subject is available on request from the Provincial Secretary for Justice.

The Secretariat welcomes representations from across the province. Comments should be directed to the Provincial Secretary for Justice, Legislative Building, Queen's Park, Toronto.

The Hon. George A. Kerr, Q.C.,
Provincial Secretary for Justice.

PART I

SUNDAY AS A COMMON DAY OF REST

CHAPTER I

STATEMENT OF THE PROBLEM AND MAJOR
ISSUESTHE PROBLEM

There have been obvious and substantial changes in social attitudes and needs since the introduction of Sunday Observance legislation early in this century. The present position in Ontario permits some Sunday retailing including non-necessity items if carried on in business establishments which are either exempted from the federal legislation as judicially defined "works of necessity or mercy" or against which prosecutions are not brought as a matter of policy. Provincial policy results from both Federal and Provincial Laws and is implemented by the Attorney General of the Province who prosecutes, at his discretion, infractions of Sunday Observance laws.

Recently an increasing number of stores have been remaining open on Sunday. Small fines authorized by the law do not deter them. The increase in the number of infractions places a heavy burden on the Attorney General who must decide in each case whether to prosecute.

This growth in Sunday retailing has resulted in public concern that the unchecked growth of commercial activity on Sunday will lead to the exposure of many employees to involuntary Sunday employment. It is also

considered likely that this increased commercial activity will erode the position of Sunday as a day of rest. However there are those who suggest that there may be an equal or even greater public concern among those who need or prefer to be employed on Sunday, and who want to see Sunday commercial activity increase.

Another concern is based on the fact that as capital intensive product techniques spread throughout industry, continuous production processes will become more and more an economic necessity to achieve maximum efficiency.

The Legislature of Ontario has the constitutional jurisdiction to enact a plenary scheme of Sunday Laws respecting provincial fields of activity as long as the legislation is carefully drawn to achieve secular and not religious purposes. The Government wishes to resolve this matter in the best interest of all citizens of the Province.

MAJOR ISSUES

The major issues are as follows:

- Do the people of Ontario wish to continue to observe Sunday as a day of rest?
- Do the people of Ontario wish to support a common day of rest?
- Do the people of Ontario wish to reflect, in legislation, the growing secularization of Sunday?
- If the consensus suggests that new legislation is desirable to regulate the growth of commercial activity, which retail outlets should it permit? What items should it allow to be sold?
- How should legislation provide for those who want and need to work on Sundays?
- How should the law be administered and enforced if enacted?
- To what extent should municipalities participate?
- Are the potential social benefits of market intervention likely to outweigh the potential disadvantages?

- Should the Government contemplate province-wide legislation that would treat all localities the same with respect to Sunday opening?
- Is the principle of a common pause day consistent with the trend of social attitudes and behavior?

CHAPTER II

REPORT ON SUNDAY OBSERVANCE LEGISLATION

PREPARED BY THE ONTARIO LAW REFORM
COMMISSION

Over the past few years, the Government of Ontario has recognized that changing social patterns may render desirable changes in existing legislation relating to Sunday.

Accordingly, in 1969, the Government asked the Ontario Law Reform Commission to study this matter.

Scope of the Report

By letter dated August 15, 1969, the Minister of Justice and Attorney General requested the Ontario Law Reform Commission to undertake a study and review of the aspects of the Sunday observance legislation in effect.

The Commission proceeded to examine the sociological and jurisdictional issues relating to the problem, held public hearings and, in general, undertook to obtain public opinions in an effort to represent the many divergent aspects of society in Ontario.

Proposals

On February 26, 1971, the Commissioners submitted their Report with a summary of proposals and alternatives. The Commissioners proposed that the Government of Ontario should provide legislative support for a uniform weekly pause day for as many persons as possible and that the pause day should be Sunday.

It was further suggested that the legislation should be secular in both purpose and effect and incorporate all Provincial Laws respecting Sunday, either by direct inclusion or by cross-reference.

A further proposal suggested that the Ontario scheme of Sunday laws should prohibit all forms of selling on Sunday except for certain clearly defined exceptions. Exceptions would be decided on their essentiality as measured by one or more of the following determinants: (1) humanitarian; (2) emergency; (3) perishability; (4) seasonal; (5) recreational; (6) familial; (7) convenience; and (8) technical. The proposals elaborate on the type of store and business establishment to be excluded from the general prohibition, and the methods of ensuring that they deal in "essential" services only.

The Report also proposed that the Ontario scheme of Sunday laws should prohibit commercial services, businesses and the employment of labour on Sunday except for certain clearly defined exceptions. This prohibition would be supplementary to the general prohibition of selling on Sunday and exceptions would have to be essential as measured by one or more of the eight determinants mentioned in the previous paragraph.

The Report further proposed that all recreational, entertainment and cultural facilities in Ontario should be permitted to operate on Sundays, subject only to municipal regulation or prohibition by by-law.

A more complete summary of the proposals and alternatives suggested by the Report will be contained in Chapter 7 entitled Options.

Effect of Proposals

Since February 26, 1971, when the Commissioners submitted their report, the Government has considered ways of

implementing some of the proposals. While in general agreement with the recommendations of the Ontario Law Reform Commission, criticism in some quarters has indicated that further public discussion based on a concise presentation of the issues as are now known is desirable.

To place the recommendation of the Ontario Law Reform Commission in context, it is useful to consider the main arguments against a uniform weekly pause day with that day being Sunday. They are as follows:

- The Commission failed to establish a social need as a basis for legislation establishing a common pause day; trends in consumer shopping habits seem to suggest that Sunday shopping may become increasingly popular; legislative interference with this trend would therefore cause some loss of consumer convenience.
- The Commission did not give full recognition to the fact that as capital intensive production techniques spread throughout industry, continuous production processes will become more and more an economic necessity to achieve maximum efficiency.
- The Commission appears to under-estimate the potential social costs of imposing restrictive Sunday observance legislation, such as a reduction in part-time and overtime work.
- The Commission placed insufficient importance on the fact that the proposed Province-wide scheme of legislation would be rather inflexible in two respects:

first: - it would not take account of variance
 in public attitudes to Sunday Observance
 from one locality to another;

second: - the proposed scheme would risk
 being unresponsive to changing
 public attitudes as to what things
 are necessary.

- While the Commission recognizes the need for exceptions to the proposed general ban on commercial activity on Sundays, it fails to provide a body of rational criteria for establishing exemptions from the general prohibition.
- The Commission fails to consider the fact that the proposed plenary scheme of Province-wide legislation would require a larger and costly administrative body; no effort was made to determine whether the expected benefits of the legislation would outweigh the cost of effective administration.

CHAPTER III

LEGAL AND HISTORICAL BACKGROUND

The roots of present Sunday observance legislation in Canada stem from the old English statutes on Sunday observance which date from as far back as the fifteenth century.¹

The original intent of such legislation is clearly expressed in the title of a statute enacted by the Province of Canada in 1845: An Act to Prevent The Profanation of the Lord's Day, commonly called Sunday in Upper Canada.² From this title it is clear that the original purpose of Sunday observance legislation was to preserve the Christian conception of Sunday as the seventh day, the day of rest.

After Confederation, some confusion existed as to whether the power to legislate on matters relating to Sunday observance fell within the jurisdiction of the Provincial Legislatures or within that of the Parliament of Canada. From 1887 to 1897, Ontario enacted and revised An Act to Prevent the Profanation of the Lord's Day. However, in Attorney General of Ontario v. Hamilton Street Railway Company,³ the Privy Council invalidated the provincial Sunday Observance Statute as being legislation in relation to criminal law, which falls within federal jurisdiction by virtue of section 91(27) of The British North America Act.

1. The Sunday Fairs Act, (1448) 27 Hen. 6, c.5
2. (1845), 8 Vict., c.45 (U.C.)
3. (1903) A.C., 524

At the beginning of this century, a group supporting the strict observance of Sunday as a day of rest, the Lord's Day Alliance, exerted considerable pressure on the Federal Government to uphold the religious nature of Sunday by legislation. After the Hamilton Street Railway case of 1903, the Alliance turned to the Government of Canada for this legislation. In 1906, the Federal Government responded with The Lord's Day Act.⁴

THE LORD'S DAY (CANADA) ACT

This Act is the principle statute prohibiting certain activities on Sunday throughout Canada.

Two Main Categories of Prohibitions:

- business and employment activities,
- commercial sports and entertainment.

The Act prohibits business and employment activities on Sunday as follows:

1. by making it unlawful to sell or purchase any goods or real estate;
2. by making it unlawful to carry on any business of a person's ordinary calling, or in connection with such calling;
3. by making it unlawful, for gain, to do work, business or labour, or to employ any other person to do work, business or labour.

Today, there are very few prosecutions brought against persons who purchase goods or real estate on Sunday.

As regards commercial sports and entertainment, it is unlawful;

1. to provide any performances or public meeting for a price;
2. to engage in any performance, or public meeting, for a price, or in any public game or contest, for gain, prize or reward; and
3. to be present at any performance or public meeting for a price, or at any public game or contest for gain, prize or reward.

Virtually all recent prosecutions which are reported under this category are brought against persons who "provide", as in (1).

Exceptions to the Lord's Day (Canada) Act

1. The Federal Act prohibits certain matters "except as provided . . . in any Provincial Act or law now or hereafter in force."

This is the provincial "opt out" provision under which Ontario has enacted The Lord's Day (Ontario) Act,⁵ permitting (with limits) certain specified activities which would otherwise be prohibited by the federal Act.

2. The second group of exceptions come within the broad term "work of necessity or mercy" for which the federal Act provides a list of twenty-four examples. Much of the case law involving the federal Lord's Day Act involves a judicial interpretation of this term.
3. There is another general exception in the federal Act for passenger traffic on all railways.

Enforcement of all prohibitions in the federal Act is controlled by the provincial Attorneys General or their lawful deputies in their respective jurisdictions by virtue of the requirement that no prosecutions can be commenced without their consent, which consent must be given within sixty days from the time of the commission of the alleged offence.

FINES:

The federal Act provides a series of minimum and maximum fines for offences, ranging from \$1 - \$40 for individuals, \$20 - \$100 for employers, and \$50 - \$250 for corporations except on second and subsequent offences in which case it is \$100 - \$500.

The basic pause day legislation in Ontario as in the rest of Canada, is, then the Federal Lord's Day Act. There are exceptions to that Act which are governed by provincial legislation principally The Lord's Day (Ontario) Act.

THE LORD'S DAY (ONTARIO) ACT

Under the "opt out" provisions of the federal Lord's Day Act, The Lord's Day (Ontario) Act allows any municipality by by-law to permit the following activities after 1:30 p.m. Sundays:

1. any public game or sport,
2. any exhibition of moving pictures, or theatrical performances, concert or lecture;
3. any horse race;
4. any exhibition, fair or trade show.

In addition, The Ontario Act permits a non-profit organization to hold any concert, recital or other musical performance of an artistic and cultural nature anywhere in the province, after 11:30 p.m. on Sunday without reference to municipal approval.

OTHER ONTARIO LEGISLATION PERTAINING TO SUNDAY

While The Lord's Day (Ontario) Act is the only Ontario Statute having Sunday observance as its principal subject matter, there are a number of statutes containing ancillary Sunday provisions. The following is a summary:

The One Day's Rest in Seven Act ⁶ requires all hotel, restaurant or cafe employers in every city or town having a population of 10,000 or over to allow their employees at least twenty-four consecutive hours of rest in every seven days, and wherever possible "on a Sunday". Employers who contravene the Act are liable to a fine of not more than \$100.

A regulation promulgated under the authority of The Game and Fish Act⁷ prohibits hunting on Sundays in most counties and districts south of the French and Mattawa Rivers. Fines are provided for contraventions.

The Pawnbrokers' Act⁸ prohibits a pawnbroker from carrying on business on Sunday, and violations are subject to a fine of not less than \$20 and not more than \$40.

The Municipal Act⁹ provides authority for a municipality to enact by-laws providing for the closing of shops for a weekly holiday and for civil and statutory holidays "during the whole of such day and until such time not later than 5 o'clock in the forenoon of the next following day". A further section permits the municipal implementation of a rotational system for retail gasoline service stations which can require all or some of such establishments to be closed between 6 p.m. Saturday and 7 a.m. Monday, but with exceptions by means of permit.

Regulations promulgated under the authority of The Liquor Licence Act¹⁰ provide different hours and conditions for the sale and service of liquor on Sunday and from those on other days of the week.

The Judicature Act¹¹ prohibits service or execution of legal process on the Lord's day (except in cases of treason, felony or breach of the peace), and renders any such service or execution void and the person so serving or executing liable to the civil suit of the party grieved.

The Judicature Act, The County Courts Act,¹² The Surrogate Courts Act¹³ and The Small Claims Courts Act¹⁴ all require their respective court offices to remain closed on "holidays" which term includes Sunday according to The Interpretation Act.¹⁵

7. R.S.O. 1970, c. 186
 8. R.S.O. 1970, c. 341
 9. R.S.O. 1970, c. 284
 10. R.S.O. 1970, c. 250
 11. R.S.O. 1970, c. 228

12. R.S.O. 1970, c. 94
 13. R.S.O. 1970, c. 451
 14. R.S.O. 1970, c. 439
 15. R.S.O. 1970, c. 225

Finally, ¹⁶The Industrial Standards Act makes provision for the promulgation of regulations giving effect to labour schedules drawn up by groups of employers and employees in designated industries and zones which establish, inter alia, the particular days in the week for the performance of labour and the rate of pay for any day may be designated as a holiday. Schedules now in force in various zones for the barbering, garment and construction industries typically contain either a prohibition of Sunday work or a requirement of overtime rates of pay for work performed on that day.

16. R.S.O. 1970, c. 221

CHAPTER IV

SUMMARY OF SUNDAY OBSERVANCE
LEGISLATION OF OTHER PROVINCES
IN CANADA

ALBERTA

The Alberta Lord's Day Act, 1969¹, empowers municipal councils by means of by-law to permit cultural activities or activities for the purposes of family entertainment after 1:30 p.m. on Sunday. The Act specifically prohibits horse racing, dog racing, boxing contests and wrestling exhibitions. A petition signed by at least 10% of the electors or 2,000 electors (whichever is the lesser) can be presented to a municipal council requiring it to pass, amend or repeal a Sunday by-law.

The Municipal Government Act² empowers municipal councils to enact by-laws to require the closing of all shops, businesses and industries of certain specified classes during the whole or any part of a holiday including Sunday. This Act contains an extensive list of exceptions which include: fairs, exhibitions, bazaars for charitable and church purposes, shops carrying on post office business, shops selling medical supplies, and certain small variety shops.

Contracts made on Sunday for the sale or purchase of any real property are null and void by The Land Titles Act³. Also contracts made on Sunday for the purchase or sale of personal property are null and void by The Sale of Goods Act⁴.

Under The Billiard Rooms Act,⁵ billiard rooms are required to close from 11:30 p.m. Saturday to 7:00 a.m. Monday except as permitted by municipal by-law after 1:30 p.m. Sunday .

1. S.A. 1969, c. 66
2. R.S.A. 1970, c. 246
3. R.S.A. 1970, c. 198
4. R.S.A. 1970, c. 327
5. R.S.A. 1970, c. 28

BRITISH COLUMBIA

The English law of Sunday observance as of 1858 still prevails in the province of British Columbia.⁶ This fact is confirmed by the Sunday Observance Act⁷ of British Columbia which specifically lists old English Acts dating from 1448 as part of provincial law. These Acts prohibit a broad range of both vocational and recreational activities on Sunday.

Aside from the statutes referred to above, there are no provisions for municipal shop closing by-laws pertaining to Sunday. However, the Municipal Act⁸ which applies to all municipalities except Vancouver and the Vancouver Charter⁹ authorized municipal shop closing by-laws in respect of certain statutory holidays and evenings. However, these shop closing by-laws do not usually extend to Sundays. The Municipal Act provides that Sunday activities relating to recreation entertainment and culture can be regulated by by-law at the municipal level. The Vancouver Charter contains similar provisions.

There are statutes regulating certain types of businesses which prohibit trade on Sundays, such as the Poolrooms Act¹⁰ and the Government Liquor Act¹¹. These types of statutes typically prohibit business on any holiday (which term includes Sunday).

6. The English Law Act, R.S.B.C. 1960, c. 129 makes the civil and criminal laws of England as they existed on Nov. 19, 1858, in force in all parts of the Province.

7. R.S.B.C. 1948, c. 318 - This statute while not in the revised statutes of British Columbia of 1960, is still in force.

8. R.S.B.C. 1960, c. 255, amended (1969) S.B.C. c. 21

9. S.B.C. 1953, c. 55, S-279A

10. R.S.B.C. 1960, c. 290

11. R.S.B.C. 1960, c. 166

MANITOBA

The Lord's Day (Manitoba) Act¹² allows any municipality by by-law to permit the following activities after 1:30 p.m. on Sundays: (1) any game, contest or sport; (2) any exhibition of moving pictures; (3) any theatrical performance, concert, lecture or other performance. The Act also permits the opening of operations of a recreational nature such as zoos and golf courses but specifically excepts: horse races, automobile races, motorcycle races, boxing contests and wrestling or judo exhibitions.

The Shops Regulation Act¹³ provides authority for a municipal council to enact by-laws providing for the closing of any class of shops for one day per week.

Other Statutes regulate such matters as the hunting of wild animals on Sunday,¹⁴ and the operation of billiard and pool rooms.¹⁵

The Employment Standards Act¹⁶ requires every employer in specified larger municipalities to provide every employee in his plant with a rest period of 24 consecutive hours in every 7 days, wherever possible on Sunday.

- 12. R.S.M. 1970, c. s. 200
- 13. R.S.M. 1970, c. s. 110
- 14. R.S.M. 1970, c. w. 140
- 15. R.S.M. 1970, c. b. 30
- 16. R.S.M. 1970, c. e. 110

NEW BRUNSWICK

The present New Brunswick Lord's Day Act¹⁷ contains exceptions to The Lord's Day (Canada) Act which are uniformly applied throughout the Province. The municipalities are not empowered to enact permitting by-laws.

The New Brunswick Act contains a detailed list of Sunday activities permitted throughout the Province.

The Game Act¹⁸ makes it an offence to hunt or kill any game or fur bearing animal, or carry a gun or firearm in any forest, wood or resort of game on Sunday.

NEWFOUNDLAND

There is no Lord's day statute as such in Newfoundland. However, shop closing and employment on Sunday is dealt with on a secular province-wide basis in The Hours of Work Act, 1963,¹⁹ which covers shop closing and employment on statutory holidays and hours of work generally. The Act prohibits shop openings and the employment of sales and office staff on Sunday and on twelve other statutory holidays proclaimed by the Lieutenant-Governor, but excepts from this prohibition, shops with a principal trade or business consisting of the sale of certain classes of goods such as: meals, refreshments, dairy products, medicines, cosmetics, items of the type sold in tobacco stores, fuel, candles, stationery and other items of a similar nature. This Act gives a fairly broad interpretation to the term "essentials".

The St. John's Garage and Service Station Act²⁰ prohibits all garages or service stations in the municipality of St. John's from opening on Sunday for the repair or service of motor vehicles or for selling motor vehicle parts or accesories. The Act also prohibits Sunday employ-

- 17. S.N.B. 1967, c. 16
- 18. R.S.N.B. 1952, c. 95
- 19. S.N. 1963, c. 69
- 20. R.S.N. 1952, c. 271

ment in such establishments except for the purpose of selling gasoline or oil.

Other statutes in Newfoundland regulate the opening of barber and hairdresser shops on Sunday,²¹ prohibit the carrying of firearms or ammunition on Sundays and the taking of dogs into wildlife areas,²² and provide for the arrest of any person violating Sunday by playing any game to the annoyance of their neighbours or of the public by acting in a disorderly manner.²³

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The Weekly Day of Rest Act, 1969, requires every employer to allow his employees a rest period of at least 24 consecutive hours in every seven days, "wherever possible . . . on Sunday".

NOVA SCOTIA

The Lord's Day (Nova Scotia) Act²⁵ permits and regulates three categories of activities which would otherwise be prohibited by The Lord's Day (Canada) Act. The first category, applying throughout the Province, includes any public game or contest or performance or public meeting for a price after 2:00 p.m. Also included throughout the Province are Sunday passenger excursions for a price at any time. In the second category the Act permits throughout the Province Sunday selling from motor vehicle service stations, drugstores and restaurants. The third category includes sales and services from certain specified classes of stores or establishments upon their individually obtaining a permit from the council of the municipality in which the store or establishment is situated. Those classes of stores or establishments eligible to apply for permits are as follows: (1) grocery stores;

21. The Barbers and Hairdressers Shop Closing Act, 1964
S.N. 1964, c. 77

22. The Wildlife Act, R.S.N. 1952, c. 197

23. The Nuisances and Municipal Regulations Act,
R.S.N. 1952, c. 72

24. S.N. 1969, c. 41

25. R.S.N.S. 1967, c. 172

(2) confectionery stores; (3) stores in which the principal business is the sale of handicrafts, novelties, souvenirs and similar articles principally to tourists and travellers; (4) canteens or fruit stands; (5) laundromats; and (6) billiard halls or pool rooms.

An early Act entitled Of Offences Against Religion Act²⁶ provides fines for the desecration of Sunday by engaging in a number of activities including: shooting; gambling or sporting; and engaging in servile labour.

The Lands and Forests Act²⁷ prohibits on Sunday the hunting, taking or killing any protected mammal or bird, or the carrying of any gun or other firearm in any place frequented by any protected mammal or bird.

The Municipal Act²⁸ authorizes a municipal council to enact shop closing by-laws in respect of "any day ... for the entire day" but with power to exempt shops, stores or places in which goods are exposed or offered for sale by retail, the personal property in which is assessed at three thousand dollars or less. Any such by-laws enacted under the authority of The Municipal Act would appear to override any of the permissive sections of the Lord's Day (Nova Scotia) Act by virtue of the phrase "subject to any other Act of the Legislature or any by-law, ordinance or regulation made thereunder" which appears in each of the permissive sections of that latter Act.

PRINCE EDWARD ISLAND

There is no Lord's Day statute as such in Prince Edward Island, but under The Town Act,²⁹ a municipal council may enact by-laws for the good rule, peace, welfare and government of the town and for a variety of specific purposes including "enforcing the due observance of the Sabbath".

26. R.S.N.S. 1900, Vol. II, p. 860

27. R.S.N.S. 1967, c. 163

28. R.S.N.S. 1967, c. 192

29. R.S. P.E.I., 1951, c. 162

The Fish and Game Protection Act³⁰ prohibits hunting on Sunday.

QUEBEC

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The Quebec Sunday Observance Act attempts to take advantage of The Lord's Day (Canada) Act's provisions by declaring that the Sunday observance laws of the Quebec Legislature in force on February 28, 1907 (the day before the coming into force of the federal Lord's Day Act) to be continued in force until amended, repealed or replaced. It also attempts to take advantage of the "opt out" provisions of the federal Act by declaring that every person is entitled to do on Sunday any act not forbidden by the Acts of the Quebec Legislature in force on February 28, 1907, and to enjoy on Sunday all such liberties as are recognized by the customs of the Province.

The Act then proceeds to prohibit a list of items. The Supreme Court has ruled that some of these prohibitions are beyond the power of the Province under the constitution; and yet, these statutes have not been removed from the statute books.

An order-in-council promulgated on April 19, 1966³² permits Sunday operation by those pulp and paper companies which have produced 90% or less of their normal capacity operating six days per week, provided that the employees affected consent and the Minister of Justice does not oppose.

A provision under the Licences Act³³ makes it an offence for a licensed billiard table or bowling alley operator to allow any person to play billiards or bowl at any time during Sundays.

30. S.P.E.I. 1959, c. 13

31. R.S.Q. 1964, c. 302

32. No. 706, 1966

33. R.S.Q. 1964, c. 79

The Commercial Establishments Business Hours Act ³⁴ regulates statutory holiday and evening closings on a province-wide basis but the Act avoids regulating Sunday hours.

SASKATCHEWAN

The Lord's Day (Saskatchewan) Act ³⁵ permits a broad range of Sunday activities of a recreational or entertainment nature.

The Urban Municipality Act ³⁶ contains shop closing provisions requiring shops to be closed in every city and town throughout the Province from 10:00 p.m. Saturday to 5:00 a.m. Monday. This requirement may be varied by municipal by-law in each community by moving the 10:00 p.m. Saturday closing ahead to 6:00 p.m. or to as early as 12:00 noon. An exemption is granted from the above closing requirement for a shop in which the principal trade or business carried on is one of (or a combination of) tobacconist, newsagent, refreshment house, druggist, confectionery, bakery, mill supplier, garage filling station, gas pump, automobile dealer; or hotel or motel where one or any of these trades or businesses are carried on. Each of the trades or businesses is clearly defined in the Legislation. The hours of operation on Sunday for exempted shops are unrestricted unless regulated by municipal by-law. Also the goods sold or services provided are unrestricted if the shop sells or provides one or more of the above list as its principal trade or business, except that a municipal by-law may restrict the nature of the goods sold or services provided during Sunday. No shop may qualify for an exemption unless the proprietor or manager has previously filed with the clerk of the municipality a statement in writing setting forth the principal trade or business carried on in the shop. The Act also exempts from the province-wide shop closing the sale of items required for an emergency, produce grown on the land on

34. S.Q. 1969, c. 60

35. R.S.S. 1965, c. 419; amended S.S. 1968, c. 46;
amended S.S. 1969, c. 34; amended S.S. 1970, c. 41

36. S.S. 1970, c. 78

which the shop is situated, and the sale of liquor in an outlet as defined in the Liquor Licensing Act.

The Game Act³⁷ prohibits hunting, shooting, wounding or killing any big game bird, discourages the use of fire-arms and prohibits the training of dogs by licenced dog trainers on Sunday.

The Labour Standards Act, 1969³⁸ provides that every employee working more than five hours per day is entitled to a rest period of at least twenty-four consecutive hours in every seven days, "wherever possible to be on Sunday".

37. R.S.S. 1965, c. 356

38. S.S. 1969, c. 24

CHAPTER V

ECONOMIC AND SOCIAL MATTERS FOR CONSIDERATION

This chapter provides a factual background against which to measure the viability of options listed in Chapter 7.

A. Existing Employment Patterns as they
Relate to Sunday

After reviewing available statistics, the Ontario Law Reform Commission in its Report,¹ summarizes the existing employment patterns in Ontario.

It appears that one out of eight persons employed in Ontario usually goes to work on Sunday. These persons are more often engaged in (1) agriculture; (2) community, business and personal services; or (3) transportation, communications and other utilities. The proportion of those engaged in agriculture is decreasing rapidly, but there is no reason to believe that this is the case in the other two classifications, and it is more likely that the proportion will continue to increase.

The numbers engaged in production, manufacturing and construction on Sunday are decreasing, but the high capital cost of automation might well result in increased demands for continuous production and the non-observance of a uniform Sunday pause day.

1. Report on Sunday Observance Legislation, 1970,
 Department of Justice (Ontario) pgs. 91-98

The retail trade employs a significant proportion of the work force, and a large number of these are employed by a few large firms accounting for a high proportion of the retail sales in Ontario, particularly in the food and general merchandise groups. Any move towards Sunday opening by these large firms would directly affect the employment patterns of a great many people in Ontario.

Information granted by Statistics Canada to the Ontario Law Reform Commission indicates the number and percentage of paid workers in 1967 who usually work on Sundays. This document indicates that 13.9% of the employed work force falls into this category. The highest percentage of Sunday workers was recorded in the fields of agriculture (31.2%), community, business and personal services (27.5%), and transportation, storage, communication, electric power, gas and water utilities (20.1%), while the lowest percentages were recorded in construction (3%), trade (4.5%), and finance, insurance and real estate (4.6%).

B. Trade Unions, Collective Bargaining and
Conditions of Sunday Employment²

It has been noted that trade unions often claim that they will look after the regulation of Sunday employment by a system of premium rates, guaranteeing alternative days off through the week, part-time/full employment ratios, and related matters and that government regulation is unnecessary. To gauge the validity of this claim, the Ontario Law Reform Commission looked into the nature of union membership in Ontario. Statistics indicate that in 1969 approximately one out of every four persons employed in Ontario was a member of a trade union. However, over half of all union membership is located in the manufacturing sector (where there is not a high preponderance of Sunday employment) whereas wholesale and retail trade account for only 2.1% of union membership, service industries 8.2%, and transportation and utilities another 14.8%. In 1969, the wholesale and retail trade sector accounted for 16.1% of the total employed labour force (as compared with only 2.1% of the trade union membership); community, business and personal services accounted for 23.5% of the total employed force (as compared

with only 9.6% of trade union membership); and transportation, communications and other utilities accounted for 7.6% of the total employed labour force (as compared with 14.8% of trade union membership).³ Therefore in the three industry sectors where there is a high or potentially high preponderance of Sunday work, the trade and service industries are not highly unionized as compared with other sectors, while the transportation and utilities sector is unionized to a greater degree than other sectors.

Regarding employees in Ontario engaged in retail and wholesale trade, it is estimated by union leaders that the proportion of retail employees in the Province who are unionized is no more than 10%. Most of these can be found in the food industry particularly in the supermarket chains where the employees of all but one major chain are unionized.

Organized labour opposes⁴ Sunday openings of commercial retail establishments and this opposition is not necessarily just a device to obtain premium rates for Sunday work. Given the choice as to double time for Sunday work or Sunday off, many union leaders appearing at public hearings held by the Commission said that their men would prefer the day off in order to be with their families or to enjoy their various recreational pursuits.

The Commissioners of the Ontario Law Reform Commission received no evidence that employees engaged in non-food retailing, even those who are unionized would be in an economic bargaining position to demand the same protection. Indeed the suggestion was made by several union representatives that these employees would be at the mercy of their employers in terms of Sunday openings except for the protection provided under The Employment Standards Act⁵ for hours worked in excess of forty-eight per week (where time and a half rates are required) and under The One Day's Rest in Seven Act⁶ for hotel and restaurant employees.

3. Statistics from data provided by the Economics and Research Branch, Canada Department of Labour.
4. Brief submitted to Ontario Law Reform Commission by the Ontario Federation of Labour on February 5, 1970.
5. R.S.O. 1970, c. 147
6. R.S.O. 1970, c. 305

Evidence gathered by the Commission indicated that the economic issues including the protection of premium rates and one day's rest in seven, are secondary to the sociological changes which would occur to family life and recreational habits of employees who chose to work on Sunday. Most retail employees, or other types of employees for that matter simply do not want to work on Sundays.

As for the location of part time staff for Sunday work, many managers believe they could possibly locate employees willing to work on Sundays on a full time or part time basis, but most said they did not think this desirable, since it would lead to an inferior level of service and create difficulties in training adequate staff.

Also low-skilled part time help constitute a group having little bargaining power. Perhaps the major concern here which tends to emphasize sociological as opposed to economic issues is the possibility of subtle pressure being applied to push reluctant employees into accepting regular Sunday work or even occasional Sunday work.

It appears that the degree of trade union membership in an industry is an important factor in determining the extent to which the employees in that industry will receive premium rate benefits and full time/part time ratio protection in respect of Sunday work. Also, those industries which have a higher degree of Sunday work content are less likely to countenance premium rates and fixed ratios for Sunday work as a matter of course, notwithstanding the degree of trade union membership. If there is a move towards an open commercial Sunday in Ontario, retail employees are the most vulnerable to employer exploitation because of the low degree of union organization, a general lack of job mobility and the resulting potential for employer economic coercion which can force them to accept Sunday work as a matter of course.

C. Sunday Retailing: Sales, Prices and Profits

Often when arguments are presented on economic considerations alone, it is not always clear whether they relate to the whole of the retail sector or merely to the adverse consequences that might result to the individual retailer if changes were made.

The removal of any restrictions on Sunday retailing would not necessarily mean that all stores would open. While one might assume that retailers would attempt to maximize their own interests in deciding whether to open or not, these decisions are not always made on the basis of pure economics alone. There is a danger in making a blanket statement without considering such non-economic factors as employee satisfaction and managerial preferences. Even after taking into account all economic factors that can bear on the problem, it is much easier to perceive the economic implications of the decision to open on Sunday by looking at the key ingredient -- the cost and availability of labour for Sunday work.

Taking economics alone, the decision taken by a class of retailers whether to open on Sunday would depend on four factors: level of service; turnover; gross margin; and the ratio of variable costs to fixed costs.

Given the situation where a retail manager decides to open on Sunday, and assuming that he does not close his store on any other day of the week to compensate for the increased costs on Sunday, where does he generate the money to pay the increased Sunday opening costs? It can come from four potential sources: (1) by increasing the total week's volume in that store; (2) by increasing prices of goods sold; (3) by decreasing profits, or (4) by increasing efficiency. If the store opening Sundays is the only store in a classification and so has a virtual monopoly position on that day, undoubtedly the increased cost will more than be covered by an increase in volume, but if an unrestrained competitive situation prevails (and assuming equality on factors such as store location and consumer habits),

many of the store's competitors would also decide to stay open, eventually reducing the advantage gained through increased Sunday sales. Therefore, unless the class of stores was willing to decrease profits (a highly unlikely event), or to increase efficiency (it is unreasonable to assume that Sunday openings would motivate increased efficiencies any greater than now exist), the only other source of offsetting the costs of Sunday openings would be to increase prices. Of course, Sunday shoppers would receive an additional benefit for this price increase, i.e., the convenience of shopping on that day, but it must be remembered that everyone purchasing goods on any day of the week within that class of retail store would be affected by the price increase. It should be noted that this argument assumes a static demand in the retail market. Retail demand is rising continuously and it is possible that Sunday opening might allow existing store capacity to accommodate the additional demand, thus increasing profits.

D. Retailing Trends in Ontario

In summarizing its comments on this matter, the Ontario Law Reform Commission Report⁷ suggests that recent trends in retailing in Ontario will ultimately lead to Sunday selling in the food supermarkets, discount houses and automotive and accessory stores unless these stores are prevented by the law from doing so. This does not mean that all food, discount and automotive stores would begin Sunday retailing. In some instances, it would not be profitable because of premium rates required to be paid for Sunday help, and in other instances, it would not be feasible as it would do too much damage to the employer-employee relationship.

7. On Sunday Observance Legislation, p. 123

The final stage of the retail evolution on Sundays in Ontario over the next twenty years without any Sunday closing laws (a stage now being reached in some parts of the United States) would be the operation of a combination of low service stores in suburban shopping centres including a modern pharmacy, a five and dime, a discount store and a supermarket. It would not be clear whether these low service stores and department stores in suburban shopping centres which eventually opened on Sunday did so to increase sales or profitability or merely as a defensive measure to meet competition. What seems clear about the future of Sunday retailing in Ontario is that it will continue to grow if left to economic self-regulation.

E. Other Considerations

The trend towards self-service shopping has reduced the costs of many retailers. With fewer employees, Sunday opening has become more attractive and this helps to explain the increase of Sunday shopping. Coinciding with this trend, since the 1930's, modern packaging and brand names have been promoted by the media. As a result many consumer segments began to move from trust in the merchant to trust in the brand name. Alert retailers were quick to offer non-food items in the self-service setting, adding product lines which had traditionally belonged to some other merchant. For example, druggists began to sell toys, stationery, hardware and candy, while supermarkets began to sell many hardware items and cosmetic lines. This was the beginning of "scrambled merchandising".

"Scrambled merchandising" poses problems for the enforcement of Sunday Observance Legislation since many retailers who ostensibly sold essential items regarded as exceptions ("works of necessity or mercy") from the prohibitions in legislation "scrambled" their essential merchandising giving the appearance of legality to that which might otherwise have been illegal.

Many people argue that retailers should remain open on Sunday for public convenience. However, over the last few decades, the work week has been shortening for most employees, while the stores have been increasing the hours during which they remain open. This implies that the majority of residents of Ontario have more time to shop than ever before. It should be noted that some of this convenience may be gained at the expense of those employed in the retail industry.

One major argument against the introduction of highly regulated Sunday retailing is that recent increases in Sunday shopping reflect a basic change in popular taste and economic trends leading to more Sunday retail sales.

In recent years, there has been some discussion respecting the staggered work week. A staggered work week would mean that people would work the same amount of time per week, but would follow different schedules. For example, some would work from Monday to Friday, others from Tuesday to Saturday, Wednesday to Sunday and so on. Those advocating a staggered work week have suggested that it would raise productivity by permitting operation seven days a week, that it would relieve week-end traffic congestion, and would distribute more evenly throughout the week the users of recreational facilities. However, this concept is still largely at a theoretical stage and presents considerable organizational difficulties, for example, how would children of school age be placed on the same schedule as their parent or parents? Another question arises. Is society prepared to accept a staggered work week? Many communities across the Province may not be ready to accept fully a staggered work week.

CHAPTER VI

PUBLIC RESPONSE TO DATE

This topic has received increasing public comment since the late 1960's. The Report of the Ontario Law Reform Commission generated other responses to government. This chapter summarizes the main points of view received to date.

A. ANALYSIS OF BRIEFS AND VIEWS OF VARIOUS
SPECIAL INTEREST GROUPS

AD HOC COMMITTEE ON SUNDAY RETAIL SELLING advocates that the Government of Ontario take legislative action on Sunday Retail Selling in line with the recommendations of the Law Reform Commission Report.

The main concern of the Committee is preserving the quality of life for Ontario residents by limiting as much commercial activity on Sunday as possible, giving people a common day of leisure to enjoy.

The Committee predicts that unchecked retailing will have very undesirable results ranging from increased costs to the consumer to the deterioration of family life.

MAC'S MILK LIMITED states that their only concern is that convenience stores be permitted to continue to provide the service on Sunday that the consuming public of the Province has demanded and adds that the large majority (approximately 80%) of Ontario residents are in favour of the Sunday operation of such outlets.

In their brief, they differentiate between supermarket food store chains and jug/milk convenience stores (as typified by Mac's Milk Limited) in terms of the relative scale and nature of operations.

Other briefs presented to the Cabinet Committee on Justice on the subject of uniform store hours make the following references to Sunday:

THE ONTARIO FEDERATION OF LABOUR maintains that a wide open Sunday is undesirable both from a standpoint of economics and also for socio-moral reasons.

THE ONTARIO PROVINCIAL UNIFORM STORE HOURS ASSOCIATION urges that legislative action be taken to halt destructive competition on store hours, presumably, this plea applies to wide open commercial operation on Sunday as well as to extended store hours Monday to Saturday.

THE NATIONAL RETAILERS' INSTITUTE makes no direct reference in its submission to Sunday retailing. It avoids this issue in its statement of concern: "The National Retailers' Institute is opposed to legislation which would restrict weekday store openings after 6 p.m. on the grounds that it would discriminate against the interests of its member companies and deprive a majority of Ontario's population of freedom of choice of shopping hours".

However, during the meeting between the Institute and the Cabinet Committee on Justice on February 8, 1973, the representatives of the Institute stated that they did not advocate wide open commercial retailing on Sunday.

THE INTERNATIONAL COUNCIL OF SHOPPING CENTERS concludes that there should be no broadening of commercial activity on Sunday at this time.

B. ANALYSIS OF LETTERS TO THE GOVERNMENT OF ONTARIO
RE: SUNDAY RETAILING

The chart below summarizes the correspondence received by the Provincial Government to June of 1973 on the subject of "Sunday Retailing".

<u>Summary of Reasons for Opposing Sunday Retailing</u>	<u>% of Total No. Letters Received</u>
Socio-Environmental (have negative influence on)	41
Religious (interferes with religious worship)	15
Cause cost rise for the consumer	10
Social-Consumer	6
Social-Religious	3
Not specific	<u>25</u>
Total	<u>100</u>

<u>Summary of Centres Showing Interest</u>	<u>% of Total No. Letters Received</u>
Toronto	38
Oshawa	14
Hamilton	4
Ottawa	3
Smaller Centres	<u>41</u>
Total	<u>100</u>

A very small number wrote to the Provincial Government advocating the expansion of Sunday retailing; their reason for supporting this viewpoint could be summarized as "personal convenience".

C. ANALYSIS OF ARTICLES AND EDITORIALS

The articles and editorials referred to in this section were compiled either by our press clipping service or brought to our special attention by either a person or organization.

These articles and editorials deal with the subject as it relates to Ontario. Of the total, some 35 articles, approximately 57% seem to favour legislation preserving the traditional characteristics of Sunday, while approximately 23% appear to support more liberalization of the laws governing the retail industry. The remaining 20% of the articles concern statements by Government Ministers and explain the issues in an impartial manner.

D. SUMMARY OF LEGISLATIVE DEBATES
 AND PRIVATE MEMBERS' BILLS

A review of the Legislative Debates 1968-72 was undertaken to glean information related to Sunday retailing generally.

In 1968, Bill 53 was passed to amend The Lord's Day (Ontario) Act to allow municipalities the discretion of having horse races and cultural and education exhibitions on Sunday. The issues were similar to those presently under consideration. The reasons for opposing the liberalization of the above Sunday activities were based on issues such as the decline of the quality of life, traffic congestion, interference with church attendance, encouragement of organized crime, employees forced to work on Sunday and the acceleration of the commercial pace.

The majority of other debates concern requests for action by Members and specific instances where retailers defied legislation by remaining open on Sunday.

E. OTHER PERTINENT INFORMATION
 RELATING TO PUBLIC RESPONSE

The Ministry of Consumer and Commercial Relations recently took a survey based on 1,500 people widely distributed throughout the Province.

Asked which stores should remain open on Sunday, respondents replied:

	<u>Should</u>	<u>Should Not</u>	<u>Don't Know</u>
Grocery	34%	63%	4%
Drug	89	10	1
Clothing	4	89	7
Department	11	87	2

As to whose function it is to decide whether or not stores may be open on Sunday, respondents selected the Provincial Government (55%) over the retailers and consumers (43%).

CHAPTER VII

OPTIONS

This chapter elaborates on four options which are sufficiently diverse to represent adequately the range of possible courses of action confronting the Government. These options are as follows: (1) to implement the proposals of the Report¹ of the Ontario Law Reform Commission which would result in a more restricted Sunday with only the most basic of necessities permitted to be sold at certain times and under certain conditions; (2) to update existing laws on Sunday Observance to recognize current practices; (3) to proceed under the umbrella of The Lord's Day (Canada) Act discouraging Sunday work indirectly by means of extending existing labour legislation, and empowering municipalities to enact by-laws to control Sunday retail hours; and (4) to liberalize present Sunday shopping laws.

1. Report on Sunday Observance Legislation, 1970
Department of Justice (Ontario) p. 371

Option (1)

Proposals of the Report on Sunday Observance Legislation prepared by the Ontario Law Reform Commission.

The major proposals of the Report are the following:

1. Ontario should provide legislative support for a uniform weekly pause day for as many persons as possible.
2. The uniform weekly pause day should be Sunday.
3. The Ontario legislation providing support for a Sunday pause day should be secular, and not religious, in both purpose and effect.
4. The legislation should have the dual secular purposes of (a) preserving a pleasant environment for the pursuit of leisure activities among families and friends; and (b) ensuring that as many persons as possible will be protected from being required to work on Sundays against their will.
5. The title of the legislation should be "The Sunday Leisure Act", as a means of reflecting its secular purpose and effect. Alternative titles which might be considered are "The Sunday Act" or "The Sunday Rest and Recreation Act".
6. The Ontario scheme of Sunday laws should prohibit all forms of selling on Sunday except for certain clearly defined exceptions.
7. The exceptions from the general prohibition of Sunday selling should be based on their "essentiality", as measured by one or more of the following determinants:
 - (1) humanitarian; (2) emergency; (3) perishability;
 - (4) seasonal; (5) recreational; (6) familial;
 - (7) convenience; and (8) technical. These determinants of essentiality should serve as rational guidelines against which demands for the Sunday operation of specific classes of stores and establishments can be easily assessed.

8. Any exceptions from the general prohibition of Sunday selling should be carefully regulated and contained in order that the intended purposes of the legislation will not be eroded by camouflaged selling of non-essential items through "scrambled merchandising".
9. The following methods of regulation and containment of "essential" Sunday selling are available for use in the legislation: (1) maximum number of employees; (2) maximum square footage; (3) product or trade designation; (4) maximum assessed value of premises or inventory; (5) hours limitation; (6) location restriction based on area and population density; (7) rotational system; (8) time of year; (9) type of management; (10) other physical limitations; and (11) licensing.
10. The following classes of stores and business establishments should be permitted to engage in "essential" Sunday selling, subject to regulation and containment: (1) gasoline service stations; (2) drug stores; (3) restaurants; (4) variety, convenience and jug milk stores; (5) tobacco shops and newsstands; (6) confectionery and candy shops; (7) nurseries; (8) fresh fruit and vegetable stands; (9) souvenir and novelty shops; and (10) antique markets.
11. Gasoline service stations should be regulated and contained on Sunday by: (1) a strict trade designation ("the retail sale of gasoline and other products necessary for the physical operation of motor vehicles, and including essential motor vehicle repairs") with a 10% allowable variance; and (2) a rotational system; both of which should be administered by a provincial licensing body for each trading area of the province. The rotational system should be adopted by the licensing body after canvassing the views of each service station operator in the area, and should ensure that one service station is open Sundays in every village, town and city, and thereafter to a maximum of 20% of normal weekday capacity with provision for a reduction to 5% in off-hours.

12. Drugstores should be regulated and contained on Sundays by: (1) a strict trade designation ("store selling drugs, medicines, medical appliances and other products usually sold in a drugstore") with a 10% allowable variance; (2) requiring a registered pharmaceutical chemist to be on the premises during all Sunday hours; and (3) a maximum of six consecutive hours of operation as determined by each store; all of which should be administered by a provincial licensing body. One drugstore in each trading area of the province should be permitted by a licensing body to operate with no hourly restriction on a rotational basis for emergency purposes. The licensing body should be empowered in any given trading area where at least 75% of drugstores request it to adopt a rotational system. Any pharmaceutical chemist or his employees who supply medicines, drugs or medical appliances for the relief of sickness, ailment or death should be exempted from the Sunday selling prohibition at all times.
13. Restaurants should be regulated and contained on Sundays by a strict trade designation ("restaurants serving prepared food") with a 10% allowable variance.
14. Variety, convenience and jug milk stores should be regulated and contained on Sundays by (1) a maximum of three employees for the entire day including the owner or manager; (2) a maximum of 2,000 square feet of combined sales and stock area; (3) a maximum of six consecutive hours of operation as determined by each store; all of which should be administered by a provincial licensing body. In addition, the licensing body should be empowered, on application by one or more stores in a trading area, to impose a rotational system on Sundays for that area where, in the opinion of the licensing body, the convenience needs of the residents of the area would be adequately served by such a system.
15. Tobacco shops and newsstands should be regulated and contained on Sundays by: (1) a product designation ("establishments whose principal trade consists of selling either tobacco products or printed materials published on a periodical basis with a frequency of at least four times per annum, or both") with a 30% allowable variance;

- (2) an assessment of need in each trading area as determined by the licensing body having regard to such factors as accessibility to consumers and alternative sources of supply; and (3) a maximum of six consecutive hours of operation as determined by each store. Tobacco shops and newsstands located in hotels, motels and other lodging facilities should not be subject to the licensing requirement except where it appears to the licensing body that more than 30% of the products of these establishments are sold to persons who are not guests at the hotel, motel or lodging facility.
16. Confectionery and candy shops should be regulated and contained on Sundays by a strict trade designation ("confectionery and candy shops, but not including bake-shops") with a 10% allowable variance.
17. Nurseries should be regulated and contained on Sundays by: (1) a product designation ("nurseries for the sale of growing trees, shrubs, plants and flowers for outdoor planting") with a 10% allowable variance; and (2) a time of year limitation to the months of April, May, the first fifteen days of June, the last fifteen days of September and the month of October.
18. Fresh fruit and vegetable stands should be regulated and contained by (1) a product designation ("the sale of fresh fruit and vegetables") with a 10% allowable variance; and (2) a time of year limitation to the period from May 1 to October 21, or alternatively, during the time when daylight saving time is in force throughout the province.
19. Souvenir and novelty shops should be regulated and contained on Sundays by: (1) a trade designation ("souvenir and novelty shops") with a price limitation (" . . . in which 70% of all items are sold at a price of \$10 or less"); (2) an assessment of tourist demand by the licensing body having regard to such factors as location and the presence of hotels and tourist attractions and the amount of non-resident traffic in each area; and (3) a maximum of six consecutive hours of operation as determined by each store; all of which should be administered by a provincial licensing body.

20. Antique markets should be regulated and contained on Sunday by a restriction to twelve Sundays of their own choosing each year upon approval of the provincial licensing body that they are a bona fide antique market.
21. The provincial licensing body should be appointed by the Lieutenant Governor in Council to hold office during pleasure. Licensing standards should be contained in the legislation as far as possible. Any discretion granted to the licensing body should be stated to be subject to particular purposes or policies clearly expressed in the legislation. The structure and organization of the licensing body and all matters of procedure, appeals and judicial review respecting licence applications, refusals, renewals, suspensions or revocations should conform to the recommendations of the Royal Commission Inquiry into Civil Rights, Report No. 1 (Ontario) pertaining to licensing.
22. The Ontario scheme of Sunday laws should prohibit commercial services, businesses and the employment of labour on Sunday except for certain clearly defined exceptions. This prohibition should be supplementary to the general prohibition of selling on Sunday, and should be stated in the following words: "It shall be unlawful on Sunday for any person (a) to engage in or conduct business or labour for profit in the usual manner and location or to operate a place of business open to the public; (b) to cause, direct or authorize any employee or agent to engage in or conduct business or labour for profit in the usual manner and location, or to operate a place of business open to the public."
23. The exceptions from the prohibition in 22 should be based on their "essentiality", as measured by one or more of the following determinants: (1) humanitarian; (2) emergency; (3) perishability; (4) seasonal; (5) recreational; (6) familial; (7) convenience; and (8) technical. These determinants of essentiality should serve as rational guidelines against which demands for the Sunday operation of commercial services, businesses and the employment of labour on Sunday can be easily assessed.

24. The following commercial services, businesses and employment of labour should be permitted on Sunday, subject to regulation and containment: (1) hotels, motels and other lodging facilities; (2) essential maintenance and domestic services; (3) services of real estate agents; (4) laundromats and other coin-operated establishments; (5) transportation services; (6) power, water and heating services; (7) communications services; (8) services to protect persons or property in danger of injury or destruction; (9) services ancillary to classes of stores or establishments, excepted from the Sunday selling prohibition; (10) services permitted under section 11 of the federal Lord's Day Act ("Works of Necessity and Mercy"); (11) services which are of recreational, entertainment or cultural nature; and (12) manufacturing, production and construction services which must operate continuously as a matter of technical or economic necessity.
25. All recreational, entertainment and cultural facilities in Ontario should be permitted to operate on Sundays, subject only to municipal regulation or prohibition by by-law.
26. Any municipal by-law providing for the regulation or prohibition of these activities by prescribing the time of commencement or termination or otherwise should be directed towards secular and not religious objects.
27. Where regional municipal governments are in existence, the regulatory and prohibitory powers over recreational, entertainment and cultural facilities should be delegated to the regional government unit and not to each municipal government within the region.
28. The Ontario scheme of Sunday laws should prohibit the employment of any person on Sunday in a manufacturing, production or construction enterprise run for a profit, except for certain clearly defined exceptions.
29. The exceptions from the prohibition in 28 should be determined by the need for continuous or seven-day production based on technical or economic necessity.

30. The following industries should be permitted to operate on Sundays: (1) mining, concentrating and smelting; (2) petroleum refining; (3) primary steel production; (4) pulp and paper production; (5) chemical refining and production; (6) commercial fishing; and (7) necessary agricultural activities.
31. Provision should be made in the legislation for such further excepted classes of industries as are designated by the Lieutenant Governor in Council for reasons of technical or economic necessity.
32. The provincial licensing body should be empowered to grant additional exemptions from the Sunday prohibitions for any class of store or business establishment within any regions, townships or municipalities, or parts thereof, which are designated as "tourist areas" by the Lieutenant Governor in Council.
33. Tourist area exemptions should be granted upon application by one or more stores or business establishments within a class, and should specify the class and the time of year. They should not be capable of being restricted to sub-areas within a tourist area nor to specific stores or business establishments, nor should it be restricted as to time of day.
34. Before granting a tourist area exemption, the licensing body should be required to convene a conference to consider (1) the views of all other stores or business establishments in the class under review; (2) the views of the regional, township and municipal councils in the tourist area under review; (3) the recreational, entertainment and cultural needs of the tourists in the area, having regard to the importance of the tourist industry to the economic well-being of that area; and (4) the views of employees in that class of store or business establishment for which the application is made. The licensing body should also be required to advertise its intention of making a tourist area exemption order before so doing, and should take into account any written objections received.
35. The Ontario scheme of Sunday laws should not include the type of prosecutory discretion contained in section 16 of the federal Lord's Day Act. Instead, prosecutions

for violations of the legislation should proceed on the same basis as for any other provincial legislation creating offences for violations of its substantive provisions, i.e. without requiring the consent of the Attorney General or his Deputy.

36. Maximum fines for offences under the Ontario scheme of Sunday laws should be set at \$100 for individuals and \$1,000 for corporations on first offence; and \$250 for individuals and \$2,500 for corporations on second and subsequent offences.

Advantages of Option 1

- It would introduce secular legislation which would allow the Province to take a new approach under its "property and civil rights power."
- It responds to the changing needs and expectations of Ontario society.
- It would permit the Province to take a co-ordinated step to stop abuses existing under present Lord's Day legislation.
- It would ensure greater uniformity throughout the Province and prevent inter-municipal competition for Sunday retail business.
- Legislation containing the above proposals would be more explicit and easier to apply.
- It would provide, for some people, advantages resulting from the maintenance of a common pause day permitting family and/or friends to gather together on at least one day of the week.
- Small store owners could close on Sunday without fear of the larger stores remaining open.
- It would regulate retail competition on Sunday. At present, there is a distinct advantage vested in a retailer who remains open while others are closed. In

face of competitive provocation, competitive retaliation often results. This is not always profitable and extra costs are passed on to the consumer.

It removes the discretionary power presently conferred on the Attorney General of the Province by The Lord's Day (Canada) Act.

- It would emphasize values other than those of consumerism.

Disadvantages of Option 1

- An Act containing the proposals of option 1 would result in less direct involvement on the part of municipalities.
- The constitutional validity of such an Act may be in question.
- Explicit legislation would result in less flexibility at a time of rapid social change and where opinions may vary from one municipality to another.
- A special administrative body is needed and this would require funds.
- It could prove difficult to enforce.
- The Act would go against trends in consumer shopping habits which seem to suggest that Sunday shopping may become increasingly popular.
- The designation of tourist areas where retailing on Sunday would be permitted, could result in discrimination against some municipalities in favour of others.
- It would interfere with the movement of trade.

- It could reduce the amount of part-time or overtime work available to those who want or need it.
- The public may not want any further regulation by Government.
- A common day of rest will strain recreational facilities and transportation links to these facilities.

Option 2

To introduce an Act under "the property and civil rights" power of the Province in order to update existing laws on Sunday Observance to recognize current practices. This option is a simplified version of the proposals contained in the Ontario Law Reform Commission Report. It reduces the number of prohibitions and simplifies the administration.

This option contains the following proposals:

1. That a new Provincial statute dealing with Sunday selling and exemptions be enacted;
2. That this Act be not related to The Lord's Day (Canada) Act.
3. That the Act prohibit all forms of selling on Sunday subject to the exceptions defined in the Act.
4. That essential services be excepted, and established for exception on the basis of the following characteristics:
 - a) Humanitarian (for health and medicine)
 - b) Emergency (fuses, light bulbs, fuel oil)
 - c) Perishability (milk and bread)
 - d) Seasonal (Fresh domestic fruit and nursery stock)
 - e) Recreational (broad interpretation includes souvenirs, newspapers)
 - f) Familial (inspecting a house or cottage, for purchase)
 - g) Convenience (items required to avoid considerable inconvenience)
 - h) Technical (gasoline)

5. *That containment of excepted services be based upon features such as:
 - a) Maximum number of staff
 - b) Maximum square footage
 - c) Product or trade designation
 - d) Fixed hours of operation for all retail outlets.
 - e) Physical limitation
 - f) Licence
6. That the following be permitted as essential services, subject to some kind of containment provisions based on item #5 above:
 - a) gasoline service stations,
 - b) drugstores,
 - c) restaurants,
 - d) convenience and jug milk stores,
 - e) variety shops and newstands,
 - f) nurseries (trees, etc.)
 - g) fresh fruit and vegetable stands,
 - h) souvenir shops,
 - i) antique markets;
7. That certain other services be excepted subject to less containment;
 - a) hotels and similar lodging facilities,
 - b) essential maintenance and domestic services,
 - c) real estate agents,
 - d) coin operated establishments,
 - e) transportation and public utilities,
 - f) protective services,
 - g) services auxillary to accepted selling services,
 - h) services excepted under Section 11 of the Lord's Day (Canada) Act,
 - i) manufacturing, production and construction service that must operate continuously;
8. That the employment of persons on Sunday be dealt with as presently permitted, and the terms be as presently regulated, whether by labour legislation or agreement.
9. That a provincial licencing body be constituted to permit exemptions in special areas from the restrictions in the Act, subject to the prior approval of the local or regional municipality;

* For explanation of categories listed in #5, see Appendix I

10. That the special areas be designated by the Lieutenant Governor in Council, after which the application for exemption for a class of store or business establishment could be made, with the prior approval of the local or regional municipality;
11. That the Act create offences for breaches of the provisions of the Act, without any consent of the Attorney General being requested; but the Attorney General still has discretion for charges made under the Lord's Day (Canada) Act.
12. That enforcement be carried out by law enforcement agencies without any special inspection services being required.
13. That the complicated administrative procedures contemplated in the report of the Ontario Law Reform Commission be simplified or eliminated with some sacrifice of the flexibility and tailoring that such procedures provide.
14. That the legislation be framed as secular regulation of trade within the Province and not as Sunday observance legislation to avoid relationship with federal criminal law;
15. That it may be advisable to permit the Lieutenant Governor in Council to designate a statutory holiday to which this new Act would apply so as to restrict trade.

Commentary

The advantages and disadvantages which apply to option 1 would also apply to option 2 with the following additions:

Advantages of Option 2

- It would increase the participation of local and regional municipalities. For example, a decision of the provincial licensing body constituted to permit exemptions in special areas from the restrictions in the Act, would require the prior approval of the local or regional municipality.
- It would simplify the complicated administrative procedures contained in the Report of the Ontario Law Reform Commission, and, as a result, would cost less to administer.

Disadvantages of Option 2

- by simplifying or eliminating certain of the administrative procedures proposed by the Ontario Law Reform Commission, it would sacrifice some of the precision and certainty provided by those more detailed procedures.

Option 3

To proceed under the umbrella of The Lord's Day (Canada) Act, discouraging Sunday work indirectly by means of extending existing labour legislation, and empowering municipalities to enact by-laws to control Sunday retail hours.

This option contains the following proposals:

1. It would retain The Lord's Day (Canada) Act as the focal point of Sunday observance legislation.
2. It would protect employees from involuntary Sunday employment by an extension of The Employment Standards Act:²
 - legislate premium rates for Sunday work in specified industries;
 - make it illegal for employers to make Sunday work a condition of employment for either current or prospective employees:
 - such provisions would be inapplicable to certain industries where Sunday work is an implied condition of employment and to part time or casual employees.
3. As an alternative to extending The Employment Standards Act, it would amend The One Day's Rest in Seven Act:³
 - to extend it to employees in industries where the problem of involuntary Sunday employment is considered most urgent;
 - to make it compulsory for employers in the relevant industries to grant regular employees, at their request, freedom from Sunday employment.

2. R.S.O. 1970, c. 147

3. R.S.O. 1970, c. 305

4. It would permit the question of Sunday business to be^{51.} settled at the municipal level by by-law⁴ with the Attorney General or his lawful deputy exercising further control at their discretion under The Lord's Day (Canada) Act.

Advantages of Option 3

- It would retain The Lord's Day (Canada) Act as the focal point of Sunday observance laws
- It would have considerable flexibility since the federal Act makes no attempt to rigorously define the classes of enterprise eligible for exemption from the general prohibition of Sunday operations.
- It would be relatively cheap to administer.
- The Acts relating to this option are familiar to the public.
- It would permit a greater degree of local participation.
- The Province is certain of the constitutional validity of this option.
- This option does not interfere with trends in consumer shopping habits.

Disadvantages of Option 3

- This option would not introduce a new act to reflect the increasingly secular nature of Sunday.
 - It would not remove the wide discretionary power granted by The Lord's Day (Canada) Act to the Attorney General of the Province.
 - It would not provide a co-ordinated approach to stop existing and potential abuses of present Sunday observance legislation.
 - Municipalities might compete among each other for retail trade in the absence of uniform regulation.
4. The Municipal Act, R.S.O. 1970, c. 284 already authorizes municipalities to make by-laws to control retail hours.

Option 4

To liberalize present Sunday shopping laws.

This option would:

1. alter existing laws by making legal what is now taking place.
2. allow municipalities complete freedom to establish Sunday retailing in their own area.
3. remove government restrictions on Sunday retailing, allowing consumer demand and business decisions to govern their actions.

Advantages of Option 4

- It allows the market to regulate itself.
- It could result in increased convenience for the consumer.
- It permits local participation.

Disadvantages of Option 4

- It could result in irregular working hours for employees.
- Long hours may force the small retailers out of business.
- Intermunicipal competition may make local regulation ineffective.

PART II

UNIFORM STORE HOURS

CHAPTER I

STATEMENT OF THE PROBLEM AND
OUTLINE OF MAJOR ISSUESSTATEMENT OF THE PROBLEM

In recent years controversy over uniform store hours has followed a common pattern. For the most part, demands for regulation have come from the mass of small and medium size retailers who are located in downtown areas and who operate during traditional shopping hours, that is Monday to Saturday and only one or two nights per week. Their concern stems from the recent construction of large suburban shopping plazas containing mass merchandising stores which remain open five or six nights per week. Understandably, this development in retail practice which began around 1960 is viewed as a threat by some retailers and they have attempted to control its development by petitioning governments to regulate hours. At the municipal level, this involves petitioning for the retention or introduction of by-laws that control opening hours. Recently, requests have been made to replace the permissive regulatory power of municipalities with a provincial statute that would provide uniform store hours.

MAJOR ISSUES

The major issues are as follows:

- Do the people of Ontario want a Provincial statute to provide uniform store hours?
- Would uniform store hours legislation cause considerable inconvenience to the consumer?
- If such a law is enacted should exemptions from the general prohibition be permitted?
- Do the people of Ontario wish to reduce the power of the municipalities as relates to retail store hours?
- Would such a law reflect adequately the diversity and varying needs of communities within the Province?
- Would such a law protect the small independent retailer from the competition of chain stores and mass merchandisers?
- What would be the economic effects of uniform store hours legislation?
- Do longer store hours result in higher costs to the consumer?
- Do unregulated store hours contribute to family disunity by reducing the time that retail employees can spend with their families?
- Should the Province interfere with the normal flow of trade?

CHAPTER II

EXISTING RESTRICTIONS IN ONTARIO
GOVERNING RETAIL EARLY CLOSINGA. EXISTING LEGISLATION IN ONTARIO
GOVERNING RETAIL EARLY CLOSING

In Ontario, two particular Acts affect the closing of retail establishments, the first and most important is The Municipal Act;¹ the second is The Employment Standards Act ².

Section 14 of The Employment Standards Act requires time and half rates to be paid for all work performed on a "holiday", or in excess of forty-eight hours per week (there are upward variations of this maximum hour requirement in certain industries.) Therefore, if there are no municipal bylaws prohibiting or confining opening hours on statutory holidays and weekdays, then a retailing employer in Ontario is free to open at any time he chooses provided he complies with the requirements of The Employment Standards Act.

1. R.S.O. 1970, c. 284

2. R.S.O. 1970, c. 147

By section 355 of The Municipal Act, the Province in effect has delegated to the small municipalities its powers over the early closing of retail stores so that the legislation governing retail hours can be found in a series of bylaws passed by the various municipalities which have chosen to exercise their authority under section 355. This municipal form of regulation is permissive and not mandatory. The Act states:

355(5)"The council of a city, town or village may by bylaw require that during the whole or any part or parts of the year all or any class or classes of shops in the municipality shall be closed and remain closed on each and any day of the week at and during any time or hours between 6 o'clock in the afternoon of any day and 5 o'clock in the forenoon of the next following day."

In effect, this sub-section provides that municipalities may determine the hours of closing by bylaws. Other sub-sections of the same section 355 empower the council of a city, town or village to close shops for weekly holidays and for weekly half-holidays.

B. THE PATTERN OF MUNICIPAL REGULATION IN ONTARIO

Recently, the Ontario Ministry of Labour undertook a survey of the by-laws in the 38 largest urban municipalities in the Province in order to see the extent to which the permissive regulatory authority is used. It was found that eighteen of these municipalities have no uniform store hours by-laws. In thirteen municipalities there are such by-laws but only for particular classes of stores. For example, the City of Toronto only regulates dry cleaners, Jewish butcher shops, gasoline service stations, hardware shops and jewellery stores. In both Kingston and Peterborough, only beauty shops and gasoline service stations are regulated.

Generally, for these thirteen municipalities the scope of the uniform store hours bylaws is quite limited. In the remaining seven municipalities, there are general bylaws with only limited exemptions.

In the following table, the applicable municipal regulation for various types of stores is presented. It can be seen that the only communities placing general restrictions on evening shopping except for one or two nights a week are Hamilton, Ottawa, Belleville, Midland, Sudbury, and Timmins. A provincial uniform store hours statute providing for shopping on only two nights a week would be considerably more restrictive than the prevailing pattern of municipal regulation in most Ontario communities.

It is apparent that the question of uniform store hours has been a matter of considerable local debate and that with the exception of Hamilton, the general trend has been away from or to avoid municipal regulation.

Two factors could account for the low level and trend away from municipal regulation of store hours found in Ontario. The first is a recognition by municipal councils of the benefits to the consumer derived from the availability of evening shopping hours. The second is a concern about the effectiveness of municipal regulation. The local merchants of a community can be adversely affected by such bylaws if their competitors can locate in an adjacent municipality that has unrestricted store hours. This is the situation in Ottawa, where, to the considerable annoyance of the downtown merchants, several suburban department stores that are open evenings have located in nearby Nepean and Gloucester townships. One of the main arguments of supporters of province-wide legislation is that, due to such boundary problems, municipal regulation is ineffective.

MUNICIPALITY	STORE TYPE						
	GROCERY STORES SUPERMARKETS	DEPARTMENT STORES	VARIETY STORES	GENERAL MERCHANDISE	FURNITURE FURNITURE & APPLIANCES	HARDWARE	CLOTHING (INCLUDING SHOES)
HOURS OF CLOSING							
Kelleville	No restriction. (grocery stores)	Mon.Tues.Wed. & Sat. 6:00 pm Thur. & Fri. 9:00 pm	No restriction.	Mon.Tues.Wed. & Sat. 6:00 pm Thur. & Fri. 9:00 pm	Mon.Tues.Wed. & Sat. 6:00 pm Thur. & Fri. 9:00 pm	Mon.Tues.Wed. & Sat. 6:00 pm Thur. & Fri. 9:00 pm	Mon.Tues.Wed. & Sat. 6:00 pm Thur. & Fri. 9:00 pm
Hamilton	No restriction. (grocery stores)	Mon.Tues.Wed. & Sat. 6:00 pm Thur. & Fri. 9:00 pm	No restriction.	Mon.Tues.Wed. & Sat. 6:00 pm Thur. & Fri. 9:00 pm	Mon.Tues.Wed. & Sat. 6:00 pm Thur. & Fri. 9:00 pm	Mon.Tues.Wed. & Sat. 6:00 pm Thur. & Fri. 9:00 pm	Mon.Tues.Wed. & Sat. 6:00 pm Thur. & Fri. 9:00 pm
Midland	All day Mon. except 3rd Mon. in month of June through to 3rd Mon. in month of September each inclusive and each Mon. in December Tues.Wed. & Sat. 6:00 pm Thur. & Fri. 9:30 pm	All day Mon. (see grocery stores) Tues.Wed. & Sat. 6:00 pm Thur. & Fri. 9:30 pm	No restriction.	All day Mon. (see grocery stores) Tues.Wed. & Sat. 6:00 pm Thur. & Fri. 9:30 pm	All day Mon. (see grocery stores) Tues.Wed. & Sat. 6:00 pm Thur. & Fri. 9:30 pm	All day Mon. (see grocery stores) Tues.Wed. & Sat. 6:00 pm Thur. & Fri. 9:30 pm	All day Mon. (see grocery stores) Tues.Wed. & Sat. 6:00 pm Thur. & Fri. 9:30 pm
Ottawa	No restriction. (grocery stores)	Mon.Tues.Wed. & Sat. 6:00 pm Thur. & Fri. 9:00 pm	No restriction.	Mon.Tues.Wed. & Sat. 6:00 pm Thur. & Fri. 9:00 pm	Mon.Tues.Wed. & Sat. 6:00 pm Thur. & Fri. 9:00 pm	Mon.Tues.Wed. & Sat. 6:00 pm Thur. & Fri. 9:00 pm	Mon.Tues.Wed. & Sat. 6:00 pm Thur. & Fri. 9:00 pm
Sault Ste. Marie	Mon.Tues.Wed. Thur.Fri. & Sat. 10:00 pm	Mon.Tues.Wed. Thur.Fri. & Sat. 10:00 pm	Mon.Tues.Wed. Thur.Fri. & Sat. 10:00 pm	Mon.Tues.Wed. Thur.Fri. & Sat. 10:00 pm	Mon.Tues.Wed. Thur.Fri. & Sat. 10:00 pm	Mon.Tues.Wed. Thur.Fri. & Sat. 10:00 pm	Mon.Tues.Wed. Thur.Fri. & Sat. 10:00 pm
Sudbury	Mon.Thur. & Sat. 6:00 pm Tues. & Fri. 9:00 pm Wed. 12:30 pm (afternoon)	Mon.Thur. & Sat. 6:00 pm Tues. & Fri. 9:00 pm Wed. 12:30 pm (afternoon)	Mon.Thur. & Sat. 6:00 pm Tues. & Fri. 9:00 pm Wed. 12:30 pm (afternoon)	Mon.Thur. & Sat. 6:00 pm Tues. & Fri. 9:00 pm Wed. 12:30 pm (afternoon)	Mon.Thur. & Sat. 6:00 pm Tues. & Fri. 9:00 pm Wed. 12:30 pm (afternoon)	Mon.Thur. & Sat. 6:00 pm Tues. & Fri. 9:00 pm Wed. 12:30 pm (afternoon)	Mon.Thur. & Sat. 6:00 pm Tues. & Fri. 9:00 pm Wed. 12:30 pm (afternoon)
Timmins	Mon.Tues.Wed. Thur. & Sat. 6:00 pm Fri. 9:00 pm	Mon.Tues.Wed. Thur. & Sat. 6:00 pm Fri. 9:00 pm	No restriction.	No restriction. (handy or corner store)	Mon.Tues.Wed. Thur. & Sat. 6:00 pm Fri. 9:00 pm	Mon.Tues.Wed. Thur. & Sat. 6:00 pm Fri. 9:00 pm	Mon.Tues.Wed. Thur. & Sat. 6:00 pm Fri. 9:00 pm
Welland	Mon.Tues.Wed. Thur.Fri. & Sat. 10:00 pm	Mon.Tues.Wed. Thur.Fri. & Sat. 10:00 pm	No restriction.	Mon.Tues.Wed. Thur.Fri. & Sat. 10:00 pm	Mon.Tues.Wed. Thur.Fri. & Sat. 10:00 pm	Mon.Tues.Wed. Thur.Fri. & Sat. 10:00 pm	Mon.Tues.Wed. Thur.Fri. & Sat. 10:00 pm
City of Toronto	No restriction.	No restriction.	No restriction.	No restriction.	No restriction.	Jan.Feb.Mar.Apr. Oct.Nov. Mon.Tues.Wed. Thur. 6:30 pm Fri. & Sat. 8:00 pm May June July Aug. Sept. Mon.Tues.Wed. Thur. 6:00 pm Fri. & Sat. 7:00 pm	No restriction.
Borough of East York	Mon.Tues.Wed. & Thur. 9:00 pm Fri. 10:00 pm Sat. 11:00 pm	Mon.Tues.Wed. & Thur. 9:00 pm Fri. 10:00 pm Sat. 11:00 pm	Mon.Tues.Wed. & Thur. 9:00 pm Fri. 10:00 pm Sat. 11:00 pm	Mon.Tues.Wed. & Thur. 9:00 pm Fri. 10:00 pm Sat. 11:00 pm	Mon.Tues.Wed. & Thur. 9:00 pm Fri. 10:00 pm Sat. 11:00 pm	Mon.Tues.Wed. & Thur. 9:00 pm Fri. 10:00 pm Sat. 11:00 pm	Mon.Tues.Wed. & Thur. 9:00 pm Fri. 10:00 pm Sat. 11:00 pm

MUNICIPALITIES HAVING NO APPLICABLE REGULATION

Barrie	Guelph	Oshawa	St. Thomas
Brampton	Kingston	Owen Sound	Thunder Bay
Brantford	Kitchener	Penbrooke	Windsor
Brockville	London	Peterborough	Borough of Etobicoke
Chatham	Niagara Falls	Samia	Borough of Scarborough
Cornwall	North Bay	Stratford	Borough of York
Galt*	Orillia	St. Catharines	Borough of North York

* Galt had by-laws but the municipality of Galt has been legislated out of existence.

CHAPTER III

BACKGROUNDHISTORICAL PERSPECTIVE

Prior to the Second World War, legislation restricting shopping hours did not appear to be an issue. Stores were open from early morning until late at night and many stores were open six full days and at least one evening, with Saturday evening shopping being the most popular. Consequently, conditions of employment were not very good since everyone was required to work long hours. Once the forty hour week became generally accepted in industry, and the shorter hours became prevalent in offices, the retail employee work week and in many cases the store week gradually shortened. The underlying reasons why many stores shortened their work week were:

- a) voluntarily, to improve personnel relations;
- b) competition for capable personnel;
- c) pressure of labour unions; and
- d) threat of union organization.

It is noteworthy that the trend towards the construction of huge shopping centres had not begun until the post-1945 era.

The basic issue of store closing legislation did not come to a head until after the War and particularly until the last decade during which time the changing shopping hours trend and the inherent issues between the small independent retailers and the larger shopping centers and discounters developed. Reaction to evening shopping hours varied across the country. Many of the larger retailers risked fines to test certain closing legislation.

In general, suburban retailers argued that the legislation in effect was outdated and not in the interests of the consumer. The downtown retailers favoured more controls since the trend was towards later shopping in the suburban shopping centers which were unaffected by municipal by-laws.

CHAPTER IV SUMMARY OF LEGISLATION GOVERNING
 UNIFORM STORE HOURS IN PROVINCIAL
 JURISDICTIONS *

QUEBEC

We have examined the Quebec situation in considerable detail since it is a province comparable to Ontario in terms of size and population. Also, in 1969, Quebec enacted legislation introducing uniform store hours. This became law on January 1, 1970. We believe that a knowledge of the Quebec experience will be of particular assistance in determining the suitable course of action for Ontario.

In 1966, a three-man study committee on the opening and closing hours of Quebec business establishments was organized by the government of Quebec under the chairmanship of Jean-Louis Rameau.

The Committee recommended that the municipalities give up the power to regulate opening and closing hours and that province-wide legislation be enacted designating in each economic region fixed hours in which retailing would be allowed.

Some of the reasons given for the Committee recommendations were as follows:

1. the fundamental elements of a sound competition are the quality of the product, the quality of the service and the price;

* Information relevant to this Chapter is found under Part 1, Chapter IV of this Paper.

2. the freedom and real need of the consumer in a competitive situation is not to have access to shopping all the time, but to be informed of the various choices as to product, service and price available so he can be in a position to decide how he wants to allocate his buying power;
3. it would not be good for the industry that all business establishments be opened every night of the week, or very long hours since in any given region in a particular period the whole of the business establishments can only sell up to the existing buying power to meet the needs of all the consumers in that region;
4. in a system of fixed hours uniform for all retail businesses, the volume of buying will not fluctuate to any great extent and the public will adapt easily to any change;
5. unrestricted business hours tend to benefit certain enterprises with several branches in their locality since they can more easily mobilize an organization to keep their establishments open long hours every working day through a rotation of personnel;
6. with long business hours, and assuming that employees need a holiday, it is impossible to synchronize the non-working hours; this operates to the prejudice of employers, employees and consumers who demand a minimum of specialized services; and
7. the sociological aspect of the problem is important and the employees of retail businesses and the merchants themselves have the right to a legitimate rest and to engage in their pastimes much the same as any other citizen.

The recent enactment of the Commercial Establishments Business Hours Act¹ can also be cited as evidence of the need for a province-wide approach to store hour legislation. However, there are at least two characteristics which distinguish the situation in Quebec from that in Ontario. First, it was complicated by a pattern of indirect regulation through collective agreements and decrees under the Collective Agreement Decrees Act. Under this Act the terms of collective agreements could be made binding on both union and nonunion employers in a given area and industry. Although both the agreements and the decrees only established the hours of work of retail employees, the effect was to place restrictions on the opening hours of stores, particularly in municipalities without early closing bylaws. Second, the extent of municipal regulation of store hours was much greater in Quebec than it has ever been in Ontario. As part of his study, Professor Mallen surveyed municipal bylaws across the country. The results for Ontario and Quebec, establish quite clearly the more extensive regulation in Quebec. It should be pointed out as well that an early closing bylaw applied throughout the Metropolitan Montreal area.

Considering the extensive direct and indirect regulation of store hours in Quebec prior to 1970, the enactment of a provincial statute limiting evening shopping to two nights per week was not a major departure from prevailing community practice.

The Act

The Act regulates the opening hours of retail stores in three different ways. First, stores are forbidden to open on certain prescribed holidays. Second, stores are prohibited from opening before 8:00 a.m. Monday to Saturday and staying open after 6:00 p.m. on Monday to Wednesday, 9:00 p.m. on Thursday and Friday, and 5:00 p.m. on Saturday.

1. S.Q. 1969, c. 60

In the period from the 11th to the 23rd of December, stores are permitted to remain open until 9:00 p.m. but on the evenings of December 24th and 31st, stores must be closed at 6:00 p.m. Third, as no opening hours are set for Sunday, the Act has been interpreted as prohibiting Sunday openings.

These general prohibitions are modified by the following exemptions:

- a. commercial establishments whose sole activity is the sale of (i) newspapers or periodicals, (ii) tobacco or articles required for the use of tobacco, (iii) meals, (iv) commodities to be consumed on the premises, (v) pharmaceutical, hygienic or sanitary products (vi) gasoline, motor oil or fuel oil (vii) automobiles, trailers or boats, (viii) agricultural machinery, (ix) flowers;
- b. commercial establishments or separate and partitioned sections of such establishments whose principal activity is the sale of newspapers, periodicals, tobacco or articles required for the use of tobacco, meals, commodities to be consumed on the premises, pastries, confectionary or pharmaceutical, hygienic or sanitary products, provided that nothing additional except food products or sundries is sold there;
- c. and commercial establishments whose principal activity is the retail sale of "commodities" and whose operation is maintained by a staff of three or less as long as the business does not form part of a greater number of commercial establishments joined together to form an association.

Other exemptions contained in the Act are more general in nature. The Act does not apply to wholesale sellers, commercial establishments of the Quebec Liquor Board, businesses that provide services, but only incidentally sell merchandise, and retail stores located in tourist areas, designated as such by the Lieutenant Governor in Council.

Enforcement and Compliance

Up until a little over a year ago, little effort was made to enforce the law. Although from the outset there has been a high level of voluntary compliance by the major retailers, various violations by small retailers were not actively pursued. The Minister in charge at the time expressed no interest in seeing the legislation rigidly enforced and the Department of Industry and Commerce appeared ill at ease in an enforcement rather than promotional role. From January 1, 1970, to October 1, 1971, a period that almost encompasses the first two years of the Act's operation, only two prosecutions were reported.

Resources currently devoted to enforcement are still minimum. The prime responsibility rests with just one official aided by the field staff of minimum wage inspectors from the Department of Labour. During the period from June to September, 1972, there were 72 letters sent giving a first warning that a complaint had been made.

Even though the Act permits prosecution by any interested party, the main responsibility has fallen on the Department of Industry and Commerce. There is only one reported case where a private organization attempted to carry through with the prosecution.

Everyone agrees that the law is being observed by all the major retailing establishments in the province. All shopping plazas, department stores and grocery chains have hours that correspond with those indicated in the Act and remain closed on Sundays and holidays.

Problem Areas

The following difficulties in administering the law were identified both by the administrators of the legislation and those outside government.

Scrambled Merchandising

The Act exempts certain kinds of stores whose "sole" or "principal" activity relates to a specified list of commodities. The original intention appears to have been that the exempt store should specialize in the listed commodities almost exclusively. The Act states that "nothing additional except food products or sundries" can be sold.

This attempt to deal with the problem imposed by scrambled merchandising has not been effective. Stores continue to sell non-specified items after the normal closing hours or on Sundays and holidays. The reliance upon complaints has been recognized as an ineffective method of controlling these purchases. The restriction that the non-specified items be confined to "separate and partitioned sections" is now viewed as impractical by the administrator of the law and is not enforced. The result, of course, is considerable dissatisfaction on the part of retailers subject to the Act. For example, regular jewellery stores were somewhat upset by the brisk business in jewellery items in drug stores late on Christmas Eve. The problem is aggravated by at least one case in which the courts gave a rather broad interpretation to the word "sundries" or in French "menus articles." In the view of one Departmental official, there has been some growth in the extent of scrambled merchandising in response to the restrictions imposed by the Act.

Chain Convenience Stores

Although the Act makes a clear attempt to control the opening hours of convenience stores, this prohibition has not been effective. One of the first cases under the Act involved Perrette Dairy Ltd., a convenience store chain operation. There was a conviction at the municipal court level, but this was reversed upon appeal.

In a decision dated May 29, 1972, the Honourable Mr. Justice James K. Hugessin placed great weight on a document which shows the value of sales at retail for the store in question during the month of June, 1970. The breakdown shows that tobacco and related items constituted 51 per cent of total sales and that the addition of other specified items listed in the second paragraph of Section 5 raises the proportion of exempt goods to 59 per cent. In other words, food products and sundries, including milk, only accounted for 41 per cent of total sales. It was reasoned that the appellant was not obliged to show that its principal activity is the sale of articles falling solely to any one of the enumerated classes, but simply that the sale of articles falling into the totality of such classes forms the principal activity of the establishment. "Principal activity" was apparently interpreted as more than 50 per cent. Accordingly the case against Perrette Dairy Ltd. was dismissed. No new prosecutions against this class of store have been instituted, and the Act is now being administered under the assumption that all convenience stores are exempt. New chain convenience store operations are being planned for the Province of Quebec with the intention of maintaining late night, Sunday and holiday operation.

Selling at Retail

The Act does not contain any explicit definition of what constitutes "selling" or "selling at retail." This has created problems in the administration of the Act, as, for example, many merchants claim to be "wholesalers" even though they sell some items to the general public. The problems in this area do not just involve ill-disguised attempts to evade the hours restrictions imposed by the Act. For example, a real problem arises in the case of auto part dealers who service both gasoline stations, which are not subject to any opening restrictions, and the general public.

A similar problem arises in the case of building material suppliers, who, in addition to selling to the public, supply materials to small contractors who must start work very early in the morning. For both these classes of stores, the hours restrictions have not been enforced. Other problems arise because the Act does not define "selling" and hence it is not clear whether door-to-door solicitation and the holding of exhibitions or auctions constitute selling at retail.

Tourist Areas

So far only six areas of the Province have been designated as tourist areas that are exempt from the normal provisions of the Act. Making these designations has become a matter of some difficulty for the Department due to the number of requests and the lack of criteria for making the decision. The current policy is to grant exemptions only to areas that have considerable tourist activity originating outside the Province. Exemptions have not been granted to recreation areas which simply contain a large number of cottages.

The Three-Employee Exemption

It was reported that this criteria for exempting small grocery stores has caused considerable difficulty. The arbitrary dividing line has caused awkward situations as small stores located close to each other, in direct competition, may be subject to different hours restrictions. The Department of Industry and Commerce is also slightly embarrassed by the fact that the three-employee rule can act as a deterrent for the growth of small businesses. There are also perplexing problems involved in the mechanics of determining whether or not more than three persons are involved in running a store. In general, the administrators view this criteria as an unsatisfactory method of distinguishing between medium size and small grocery stores.

Possible Changes

Certain groups in Quebec are requesting that the existing Quebec legislation be altered: to increase the number of goods exempted from the general prohibition of the Act, and, to permit stores to set their own hours between 7 a.m. and 9 p.m., Monday to Saturday.

These alterations would reflect a basic change in philosophy. Instead of legislation providing a highly complex range of retail hours, it would set a broad framework within which retailers would be free to set their own opening hours to conform with operating costs, their personal preference, and the preference of their consumers.

SUMMARY OF RELEVANT LEGISLATION OF OTHER JURISDICTIONS

Newfoundland

The Hours of Work Act, 1963² has been in effect since 1963 and was designed to:

1. limit the maximum number of working hours for shop employees;
2. establish certain minimum standards in shops;
3. permit more effective service to the public in general.

The Act permits a municipality to seek exclusion from the Provincial legislation but there is another provision which permits the Provincial authority, if it so wishes, to oblige any municipality to adhere to the terms of the Act.

The Act provides for the observance of certain statutory holidays.

The Hours of Work Act, 1963 does not specify the opening and closing hours. This is left to the discretion of the merchant.

2. S.N. 1963, c. 69

NOVA SCOTIA

There is no specific Provincial legislation governing working or retail hours in the Province. Both the creation and enforcement of such laws are the responsibility of the various municipal governments. ^{2a}

PRINCE EDWARD ISLAND

The Store Hours Act ³ gives municipalities full authority to regulate their own retail store hours.

A uniform store hours bill was introduced in 1969, but to our knowledge, did not receive royal assent.

NEW BRUNSWICK

The Municipalities Act ⁴ delegates to municipalities the power to regulate the business hours of retail outlets by by-law.

Where municipalities institute by-laws to restrict retail business hours, they do so for the following reasons:

- a. to benefit the community
- b. to give equal trading opportunities to small and large outlets alike
- c. to benefit small stores

MANITOBA

The Shops Regulations Act ⁵ permits municipalities to regulate their own retail store hours by means of by-laws.

- 2. a. Municipalities are so empowered by the Municipal Act, R.S.N.S. 1967, c. 192
- 3. S.P.E.I. 1961, c. 53
- 4. S.N.B. 1966, c. 20
- 5. R.S.M. 1970, c. S110

SASKATCHEWAN

Acts governing retail closing hours in Saskatchewan are:
The Labour Standards Act, 1969,⁶ The Industrial Standards Act,⁷ and The Urban Municipality Act, 1970.⁸

The effect of the above legislation has been to grant the municipalities limited power to regulate retail hours. For example, municipalities may require that shops remain closed on one week-day each week or one afternoon of any one day. In addition, municipalities may limit evening shopping to one night per week plus four nights weekly in the fourteen days before Christmas.

ALBERTA

The Municipal Government Act⁹ empowers the municipalities to regulate retail store hours by by-law.

Retail store hours are affected indirectly by labour legislation which sets the number of weekly working hours for certain employees.

BRITISH COLUMBIA

The Municipal Amendment Act, 1964¹⁰ specifies that shops are to be closed on statutory holidays and specifies the days and times that shops are to remain closed, but the Act gives to the council of any municipality the right to alter some of these provisions.

The Municipal Act also:

- a. permits municipal councils to exempt any class of business completely;

6. S.S. 1969, c. 24
 7. R.S.S. 1965, c. 286
 8. S.S. 1970, c. 78
 9. R.S.A. 1970, c. 246
 10. S.B.C. 1964, c. 33

- b. permits municipal councils to provide special hours for the seven days preceding Christmas Day;
- c. sets out special provisions with respect to service stations;
- d. makes provision for certain exemptions from closing hours restrictions during specified months in the year.

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The Hours of Work Act affects retail outlets indirectly by specifying the maximum number of hours certain types of employees can work per week.

CHAPTER V

ANALYSIS OF THE GENERAL ARGUMENTS

It is useful to review the overall nature of the arguments for and against uniform store hours legislation. Those favouring legislation view competition based on extended store hours as irrational and destructive. It is predicted that if this form of unfair competition goes unchecked, more and more retailers will extend their hours in order to compete. Costs and prices will rise as retailers will be forced to use more labour in order to service the same volume of retail trade. The cost increases may cause some retailers to go bankrupt. With regard to employees, there will be pressures to increase the total number of hours worked. In addition, there will be a tendency to substitute part-time for full-time workers and more workers will be forced to work evening hours. Without regulation, all this disruption is suffered for what is viewed as, at best, a marginal gain in the form of increased convenience for shoppers. Having established that regulation is desirable, it is argued that municipal regulation through by-laws has not been effective and that a province-wide approach is required.

The most vocal opponents of regulation are, as one might expect, the large suburban merchandizers. In their view, the trend to evening shopping is a response to the real needs of the consumer and its curtailment would cause great inconvenience to shoppers, not to mention the investors who have spent millions of dollars in facilities planned with evening operations in mind. The demands for regulation are seen as an over reaction on the part of downtown retailers to a new innovation. It is predicted that evening openings

on the part of suburban retailers will not generate an escalation in the opening hours of other retailers nor severe dislocations as the latter give a unique service in their own distinct markets. Moreover it is claimed that long opening hours are not associated with long working hours nor increased costs and prices. The introduction of provincial legislation is seen as not only unnecessary interference with free enterprise but against the developing trend in municipal regulation.

To some considerable extent the arguments of the opposing groups are based on conflicting claims as to the impact of uniform store hours. In the following sections the available evidence on some issues frequently raised in the debate is scrutinized.

A. STORE HOURS IN AN UNREGULATED ENVIRONMENT

Those favouring extensive regulation argue that if unchecked there will be a general escalation of store hours as merchants extend their hours to meet the competition from suburban retailers. There are suggestions that the escalation will be extensive, irreversible and irrational. The process is sometimes likened to the spread of trading stamps in grocery stores. As there are a number of communities where store hours are not regulated, there is an opportunity to see to what extent competitive escalation does, in fact, occur.

Unfortunately no extensive documentation on store opening hours is available. But it is possible to make general observations for a few communities. For the most part, the Metropolitan Toronto area has been free from regulation for some time and the pattern of hours that has emerged can be considered as typical of a large urban area. Despite the rapid expansion of late night shopping in suburban plazas, there has been no marked trend towards longer hours on the part of the main body of downtown retailers. They remain closed in the evenings except for one or two nights per week.

The same is true of stores in local plazas and stores that cater to the needs of local neighborhoods. Extended opening hours appear to be generally confined to the rapidly-growing number of stores located in suburban shopping plazas providing extensive parking facilities and a few "maverick" retailers located in both the downtown and suburban areas. A few of the latter also extend their opening hours to the early hours of the morning.

In the United States, where there is virtually no regulation of store hours apart from some controls on Sunday openings, a diverse pattern of opening hours has emerged. Professor Mallen has described it as follows:¹

"Because of the fact that people flock to the suburbs to do their shopping after 6 p.m. in discount stores, many of the traditional department stores have now also begun to close later. Shopping after traditional business hours and on Sundays is most prevalent in the State of California. In many instances, supermarkets and other stores carrying necessities remain open twenty-four hours a day and seven days a week. It is usually the suburban stores which stay open after hours and on Sundays in order to allow people who work to do their shopping after hours. Rural communities which are closely knit and which are isolated (less competitive) from major metropolitan areas usually do not have stores remaining open after hours."

The pattern of store openings is not unlike that of Ontario. Suburban communities in which there are major shopping centres and regional shopping centres do tend to stay open every night, but small cities and towns do not face the competition of regional shopping centres with major chain stores represented and they tend to have more normal hours.

1. Bruce Mallen and Ronald Rotenberg, "The Benefits and Costs of Evening Shopping to the Canadian Economy".
(Mimeographed, 1969) p.93

A number of downtown retailers have expanded their evening openings to one or two nights per week or even three nights. Some have gone as far as five nights per week.²

In Calgary, a seven-year experiment, completed in 1963, allowed unrestricted shopping hours. The two nights with the heaviest volume, Thursday and Friday, emerged as regular evening openings.

The only attempt to fully document the impact of long store hours on a local community deals with Charlottetown, P.E.I. In the view of the National Retailers' Institute, the situation was typical of the reaction of many smaller communities when the local merchants feel threatened by the impending presence of a major suburban shopping plaza scheduled to operate with extended hours. At the time, 1969, the Charlottetown merchants predicted dire consequences. Three years later, Professor Lawrence Parker surveyed the local merchants to determine what adjustments had taken place. It was found that the existing retailers did not join together and expand their hours to those of the new competitors. In fact, not one retailer had expanded his hours.³

To sum up, there is no doubt that an absence of regulation has been accompanied by substantial recent growth in large suburban plazas operating with extended hours. A few maverick retailers also operate with extended hours. Yet there is little indication that the rest of the retailing community will respond to this competition by extending their hours. Local neighborhood merchants continue to operate on the basis of traditional retailing hours. Downtown merchants also service their own separate markets and generally stay open just one or two evenings per week. The store traffic for downtown merchants is a product of the unique attractions of the city core. But a good part of the traffic retreats to the suburbs in the evening and the downtown merchants, lacking extensive parking facilities, cannot attract enough customers to make it profitable to stay open every evening.

2. Ibid. pp. 292, 301 and 305

3. Lawrence L. Parker, "Charlottetown P.E.I. Retail Market Survey".

B. RETAIL EXPENDITURES

Part of the apprehension of downtown retailers stems from a belief that total retail sales are approximately fixed and that the business flowing to suburban mass merchandising chains open on a late night basis must be at their expense. In their view, if all retail establishments were subject to the same rules the same volume of sales could be concentrated in fewer opening hours and all retailers would be better off. Those supporting extended opening hours have argued that in fact total retail sales are expandable and that because late night shopping represents an extra convenience, the sales going to these stores are not necessarily being drawn from other stores. Instead, to a certain extent they are derived from an expansion in total retail expenditures.

No meaningful evidence on this point has been produced, and given the number of factors which impinge on total retail sales, it is doubtful whether an answer could be given. But in a real sense, it is a subsidiary issue. The main concern is whether the movement to late hours is accompanied by severe disruptions for the established retailers. It is not certain that this will be the case if the change occurs at a time when overall retail sales are expanding and the established retailers specialize in the types of retailing services they can provide best.

The submissions supporting regulation have not included any documentation on the degree to which established retailers have actually been affected. On the other hand, the Charlottetown study demonstrated that despite the prediction of dire consequences, the established merchants were not adversely affected by the opening of a suburban discount store operating on a late night basis. However, this is simply one case and it clear that very little is known about the extent of the disruption being caused to established retailers.

Whatever the extent of the disruption, it must be kept in mind that much of the adjustment to evening shopping has already taken place. Evening shopping throughout the week has been growing since 1960 and, as will be indicated, is an established practice in many parts of the Province. For example, four firms, (Stedman's, Towers, Woolco and Zellers) now operate a total of 71 suburban department stores and suburban discount stores in Ontario with extended opening hours.

C. CONSUMER CONVENIENCE

The importance of late hour openings as a convenience for the shopper is often related to two trends: the increased participation of females in the labour force and the shift of population to suburban communities.

At the present time approximately 40 per cent of all females of working age are employed. In 1960, the number of employed married women in Ontario was about 350,000. By 1970, this had increased by 84 per cent to approximately 645,000. Furthermore, it is predicted that females will increase their participation in the labour force in the future. For those females who do work, shopping before 6 p.m. is very inconvenient.

The second important change is the explosion of population in the suburban communities. Between 1961 and 1966 the population of the City of Toronto decreased by one per cent while that of its suburbs increased by 30 per cent. Due to the distances involved, shopping in suburbia often requires a car and for many families this effectively restricts shopping hours to the evening and Saturdays.

Undoubtedly, the expansion of evening shopping is a response to these trends.

Operators of suburban shopping plazas claim that they do more than 60 per cent of their business after 6 p.m. Although the distribution of sales is concentrated towards the end of the week, it is claimed that sales on Monday and Tuesday evenings are quite substantial. In their view, to restrict evening shopping to two nights per week will not only reduce their total sales but also produce congestion during the evenings and Saturday.

The proponents of regulation argue that current shopping patterns are more a matter of habit rather than convenience. It is suggested that two nights per week and Saturday give ample opportunity for shopping, even for working wives. It is also suggested that the increasing popularity of the four-day week and the trend toward early retirement should increase the discretionary time available for shopping. In general it is implied that the shopping public will easily adapt to a uniform schedule of hours that involves just two evening shopping days per week.

Again the evidence is scanty. Only two general surveys of public attitudes were uncovered. The Ottawa Board of Trade, a proponent of uniform store hours legislation, commissioned the Elliot Research Corporation to do a survey of consumer attitudes in Quebec. The survey involved 822 personal interviews among shoppers in various communities across the Province.⁴ The survey indicated that seven out of ten Quebec shoppers are satisfied with the existing hours (two nights per week), with 25 per cent wishing longer hours and 5 per cent satisfied with shorter hours.

A survey by the Retail Merchants Association of Canada (Alberta) covering all retailers in the Edmonton area revealed that 94 per cent of all the retailers were not in favour of having the early closing bylaws repealed.

4. The sampling technique is not described in the report.

In the City of Edmonton on October 16, 1968, the question of store hours went to a public referendum. Under the assumption that store hours were to be controlled, 74 per cent of the electors favoured six days and two evenings per week of shopping. However, when asked whether store hours should be controlled by city council, 69 per cent of the electors said no. As a result of this Edmonton repealed its early closing bylaw.

It should be stressed that in both the Quebec and Edmonton surveys, the existing legislation restricted shopping hours. The results might be considerably different in a community where no restrictions are present and evening shopping is extensive.

D. COSTS AND PRICES

The conflicting views concerning the impact of long opening hours on retail costs and prices arise for the most part because each side in the debate is talking about different things. For the local neighbourhood or downtown retailers, longer opening hours mean higher labour costs. Since a substantial increase in volume is not expected, it is believed that unit sales costs would rise. If all retailers extended their opening hours, all their costs would rise and there would be no compensating increase in retail sales. Hence supporters of store hour regulation suggest that prices would rise.

Such a scenario is based on an irrational competitive escalation of store opening hours and it is not at all clear that this would occur or that the local neighbourhood or downtown retailers would be able to raise prices successfully. Normally, it would be expected that a retailer will only extend his opening hours if he finds it profitable to do so, that is, if the extra sales will cover the extra costs. The fact that many small and even large retailers do not extend their hours when this option is available suggests that the pattern of traffic that their stores face is such that it is not profitable for them to open every evening of the week. Even if their hours

were extended it is unlikely that the higher costs and prices could be sustained. As the prices in these stores would exceed those of stores more readily adaptable to evening openings, they would likely lose their sales volume.

In short, in the absence of regulation, competitive pressures on local neighborhood or downtown retailers are not likely to lead to a general escalation of their store hours and hence their prices. It is more likely that cost pressures for these retailers will develop due to a reduction in volume of sales generated during the traditional store hours as business shifts to stores that remain open evenings. For some of the early closing stores, it may be feasible to adjust to the reduced volume and higher unit sales costs by raising prices. For others, the only possible adjustment to the new demand conditions may be to lower prices in order to attract sufficient volume to sustain profitable operations. For still others, the only alternative may be to go out of business. The overall adjustment to extended evening shopping will be a shift in the structure of the industry, with an increasing share of total retail sales going to plazas with viable evening operations. The price levels of the established merchants may go up or down depending upon the particular demand conditions that confront each store.

There is less doubt about the effect of store hours restrictions on the costs of suburban plazas in which stores now find it profitable to remain open every evening throughout the week. In these cases the extra sales associated with evening operation without doubt more than cover the extra operating costs. In fact, it is claimed that the long opening hours are essential to help defray the high fixed cost associated with the operation of these stores. In a sense, the extended business hours maximize the use of land, buildings, store fixtures and inventories in suburban department stores and shopping centres.

If these facilities were restricted to operation during just two evenings per week, their unit sales costs would rise and their prices would rise. In other words, evening openings five or six nights per week result in lower unit sales costs and prices for a number of suburban plazas.

In total, the trend toward extended opening hours may or may not be associated with higher prices for local and downtown merchants. But it clearly means lower costs and prices for a number of suburban plazas. It is therefore misleading to suggest that extended stores hours will result in a higher general level of retail prices. Even if the prices of established retailers do rise in the absence of store hour regulation, the consumer is given the option of lower prices in those stores that do find it profitable to stay open.

E. IMPACT ON EMPLOYEES

The trend towards longer store hours associated with the growth of suburban shopping plazas during the 1960's could have major implications for employees in retail trade. The trend could conceivably affect their total hours worked per week, the distribution of these hours throughout the day and the composition of the retail trade labour force. In the following sections, each of these issues is considered separately.

(i) Weekly Hours

Much of the controversy surrounding uniform store hours involves the charge that retail employees working stores with frequent evening openings will be forced to work long hours. Basic data related to this issue is presented in Table 1. It is clearly indicated that individuals employed in retail trade do not on an average work longer hours than in other industries.

On average, full-time retail employees work 39.1 hours or slightly less than the prevailing pattern in manufacturing. This average varies somewhat between small and large establishments. Full-time employees in establishments with 20 or more workers have average hours of 38.0 hours compared with 42.1 hours in smaller establishments. Full-time male employees work an average of 40.5 hours per week or about 3 hours more than females.

The table also highlights the overall importance of part-time employment in retail trade. In both small and large establishments, almost a third of all employees are part-time. Moreover these part-time employees work a considerable number of hours each week. Male part-time employees work an average of 18.4 hours per week whereas part-time females average 20.1 hours. This staffing pattern gives considerable flexibility in adapting to opening hours which extend beyond forty hours per week.

Basically the same hours of work for retail employees were revealed in the Survey of Wages, Hours of Work, and Over time Pay Provisions carried out by the Research Branch* in April 1972. As shown in Table 2, 41 per cent of the employees covered have standard hours of less than 35 per week. In addition, for full-time employees, a standard work week exceeding 44 hours does not appear to be that common. In fact, long hours appear to be more of a problem in the personal service sector and certain manufacturing industries than in retail trade.

The information on working hours given above covers stores with varying opening hours and it is not clear that it is typical of those stores that operate five and six evenings per week. Representatives of these stores have reported that they do not have employees that work long hours, with the evening operations being staffed mainly with part time help.

* Research Branch, Ontario Ministry of Labour.

TABLE 1

EMPLOYMENT AND HOURS OF WORK IN THE RETAILING INDUSTRIES BY
SIZE OF ESTABLISHMENT, ONTARIO, SEPTEMBER 1970

Employment Category	Percentage Distribution of Employees	Average Weekly Hours
All Establishments		
Full-Time		
Total	67.8	39.1
Male	61.4	40.5
Female	38.6	37.3
Part-Time *		
Total	28.8	19.5
Male	42.9	18.4
Female	57.1	20.1
Large Establishments		
Full-Time		
Total	67.7	38.9
Male	55.6	40.2
Female	44.4	37.2
Part-Time		
Total	28.7	19.6
Male	38.0	18.-
Female	62.0	20.2
Small Establishments		
Full-Time		
Total	70.2	42.1
Male	70.2	43.8
Female	29.8	38.7
Part-Time*		
Total	29.8	17.9
Male	50.5	17.0
Female	49.5	18.6

Source: Statistics Canada, Earnings and Hours of Work in Canada, 1970, Cat. No. 72-601, pp. 10 and 13.

* Less than 35 hours per week.

TABLE 2

PERCENTAGE DISTRIBUTION OF NON-SUPERVISORY EMPLOYEES BY STANDARD WEEKLY HOURS OF
WORK IN SELECTED INDUSTRIES,
ONTARIO, APRIL 1972

INDUSTRY	TOTAL EMPLOYEES	STANDARD WEEKLY HOURS OF WORK						
		Less than 35.0	35.0- 39.9	40.0	40.1- 44.0	Over 44.0	Average	Median
MANUFACTURING								
Fruit & Vegetable Canners & Preservers	6,452	5.2	7.4	71.7	6.0	9.6	39.6	40.0
Feed Manufacturers	3,257	5.7	10.7	68.3	4.7	10.7	39.3	40.0
Shoe Manufacturers	7,649	2.1	6.6	57.4	25.4	8.6	40.2	40.0
Luggage, Handbag & Small Leather Goods Manufacturers	2,690	2.5	13.8	72.6	2.2	9.0	39.7	40.0
Cotton Yarn & Cloth Mills	3,098	1.1	6.0	86.9	5.6	--	39.6	40.0
Wool Yarn Mills	1,341	2.9	6.6	62.9	1.9	25.6	41.3	40.0
Wool Cloth Mills	1,516	4.1	10.0	56.4	14.7	14.8	40.0	40.0
Fibre Preparing Mills	392	38.9	5.9	15.6	2.8	36.8	27.1	40.0
Textile Dyeing & Finishing Mills	396	9.8	3.3	52.5	27.0	7.4	39.2	40.0
Canvas Products Industry	1,054	4.2	9.9	51.1	17.3	17.4	40.2	40.0
Hosiery Mills	1,937	2.6	4.0	48.0	20.2	25.1	41.5	40.0
Other Knitting Mills	4,401	1.4	10.8	28.9	37.6	20.0	41.1	41.3
Men's Clothing Industry	10,488	1.7	7.2	77.9	8.5	4.7	40.0	40.0
Women's Clothing Industry	5,339	2.4	53.8	30.7	4.8	8.3	38.3	37.5
Children's Clothing Industry	1,312	1.6	10.8	64.4	18.4	4.8	40.2	40.0
Hat & Cap Industry	440	4.0	38.6	55.2	--	--	38.6	40.0
Foundation Garment Industry	1,204	2.3	26.7	67.4	4.0	--	39.1	40.0
Other Clothing Industries	233	9.0	17.6	67.0	--	--	37.8	40.0
Sawmills	4,752	3.8	2.0	35.3	7.7	51.3	42.1	45.0
Veneer & Plywood Mills	1,991	2.6	2.6	61.3	22.1	12.0	40.7	40.0
Sash & Door & Planing Mills	4,978	2.4	6.5	28.4	19.8	42.0	42.5	42.5
Household Furniture Industry	10,227	2.9	7.0	33.4	27.4	29.3	41.7	42.5
Communications Equipment Industry	17,234	0.6	20.9	76.4	1.0	1.1	39.4	40.0
Manufacturers of Toilet Preparations	2,226	3.0	24.7	66.7	5.4	--	39.0	40.0
Jewellery & Silverware Manufacturers	3,235	1.9	16.2	73.4	7.3	1.2	39.3	40.0
Plastic Fabricators, n.e.s.	12,014	3.8	12.6	72.4	6.5	4.8	39.3	40.0
Sporting Goods & Toy Industry	4,508	1.9	11.4	59.7	12.9	14.2	40.6	40.0
RETAIL TRADE	360,872	40.7	12.3	28.0	6.6	12.4	27.8	37.5
PERSONAL SERVICES								
Laundries, Cleaners & Pressers	11,604	22.5	6.9	36.3	16.7	17.6	36.2	40.0
Hotels, Restaurants & Taverns	76,660	42.1	7.8	24.1	4.3	21.7	31.2	40.0
TOTAL	563,500	32.8	11.7	34.2	7.5	13.7	30.9	40.0

NOTE: Percentages may not add to 100.0 per cent due to rounding.

- No employees in this category.

-- Reliability of statistic too low to permit release.

This was checked through an examination of the returned questionnaires of the 1972 Wages, Hours of Work and Overtime Pay Provisions Survey completed by a small sample of stores known to maintain extended opening hours. Out of the 1,208 employees for which hours information was given, only five per cent had standard hours in excess of forty per week. This confirms a result reported by Professor Mallen. He surveyed several retail chain companies operating a total of 482 stores, many of which had frequent evening openings. The average hours worked per week turned out to be 40.1. The longest scheduled work week was 44 hours.⁵ For large stores at least, there appears to be no relationship between long store hours and long work hours.

Whether or not the same is true for smaller stores is uncertain.. It has already been pointed out that they have longer working hours and presumably less flexibility in adapting to extended opening hours. If a small store chose to open several evenings per week, it would probably be at the cost of leisure for the working proprietor and perhaps some of his employees.

(ii) Evening Work

Undoubtedly, without restrictions on store opening hours, a greater proportion of retail employees are required to work evenings. It has been argued that a reorganization of work schedules away from the normal daily pattern is opposed by retail employees and that store hours regulation is required to prevent serious disruption to their family life.

The extent to which employees oppose evening work is not well documented. Professor Mallen doubts whether there is extensive opposition. He reports "Retailing experts in the States feel that employees and their unions do not object to the stores remaining open during the evening

5. Mallen, "The Benefits and Costs of Evening Shopping". p.69-70

and longer hours on weekends so long as the employees are not required to work more than a forty-hour week." ⁶ On the other hand, unions in Canada are on record as opposing evening work. The Metropolitan Toronto Labour Council has recently undertaken a study which showed that employees generally are dissatisfied with late shopping hours and Sunday store openings.⁷ In addition, the Ontario Federation of Labour and the major unions engaged in the retail trade industry have all clearly expressed their opposition to evening work.⁸

It must also be kept in mind that unions generally have attempted to impose restrictions in collective agreements on the amount of evening work by regular full-time employees that can be scheduled by management.

However, even where stores are open five or six nights per week it appears that full-time employees are not often required to work more than one or two evenings. In collective agreements covering grocery store employees in Ontario, a typical provision restricts evening work for full time personnel to one night per week. In some cases the scheduling of evening hours depends on the number of nights the store remains open. A contract might read as follows:

Employees may be scheduled to work one night if the store is open three or less nights per week and if the store is open in excess of three nights per week, employees may be scheduled to work two nights per week and such employees shall not be scheduled to work two successive nights or every Saturday night.

6. Ibid, pp.22-3

7. See Alan Jeffrey Associates, "A study on Retail Stores Hours" (mimeographed, November, 1971) p.17.

8. Ontario Federation of Labour, "Submission to the Government of Ontario on the Subject of Uniform Provincial Store Hours." (mimeographed, 1972) p.2.

The contracts also typically contain prohibitions of split shifts, that is, work in both the morning and evening but not the afternoon.

Judging from information supplied by representatives of a few stores, the same pattern appears to prevail in the larger discount and department store which are almost completely nonunion. In the United States where evening shopping is extensive, it is reported that full-time personnel only work one or at most two evenings per week.⁹ For the larger stores at least, the main burden of staffing evening operations falls to part-time personnel. For these employees, many of them married women with family responsibilities, the only convenient hours of work may be in the evening. Hence, there may be an important difference in attitude towards evening work between full and part-time workers.

(iii) Composition of the Labour Force

Due to the exigencies of scheduling and employee preferences for certain combinations of work hours, the expansion of evening shopping in the absence of regulation has probably been accompanied by a greater use of part-time personnel. Thus, it could be argued that regulation would promote the substitution of full-time for part-time jobs and thereby provide needed income to primary breadwinners.

However, from another point of view, it is not evident that full-time rather than part-time employment should be favoured. Evening work in retail trade is a major source of employment for students and housewives, who, due to other demands on their time, find it difficult to participate in the labour force on a regular full-time basis. Restricting evening store operations would contract the limited range of employment opportunities available to them.

9. Mallen, "The Benefits and Costs of Evening Shopping"
p. 56-57, 296, 301

CHAPTER VI

PUBLIC RESPONSE TO DATEA. ANALYSIS OF SUBMISSIONS TO THE GOVERNMENT OF ONTARIOThe Ontario Provincial Uniform Store Hours Association

The Ontario Provincial Uniform Store Hours Association or "PUSH" as it is popularly known is a retail businessmen's organization whose sole objective is the establishment of uniform retail store hours throughout the Province of Ontario.

It was formed in September 1972, to co-ordinate the ideas and efforts of many groups and individuals who were petitioning Government offices and Members of the Legislative Assembly -- or were about to -- for changes in legislation which would result in uniform retail store hours in Ontario.

The Association has gathered as many separate views as time has permitted in order to provide a significant consensus of opinion for the information and guidance of the Government.

PUSH estimates that it represents approximately 10,000 businesses. It suggests the extensive support for its recommendations is evidence that it does speak for the retail segment of the business community.

The Association urges the Government of Ontario to enact legislation to standardize uniform hours for retail store operation throughout the Province.

PUSH recommends that retail business hours be from 7.30 a.m. to 6 p.m. Monday to Wednesday, 7.30 a.m. to 9.30 p.m. Thursday and Friday, 7.30 a.m. to 6 p.m. Saturday with Sundays closed except for special exemptions.

These exceptions include:

retail outlets selling commodities such as newspapers, periodicals, tobacco and tobacco products, food for consumption on the premises, pharmaceutical, hygiene and sanitary supplies, gasoline and motor oil, works of art, antiques, tourist souvenirs, films, plants, growing stock, bread and milk.

These outlets would not be allowed to sell any merchandise not exempted beyond the specified normal business hours.

Small confectionary and food stores that employ no more than three employees including the proprietor, and that are not units of a chain would also be exempted.

The Association further recommends that stores remain closed on statutory holidays, and where they fall on a Sunday, the stores should remain closed the following Monday.

Ontario Federation of Labour

The Ontario Federation of Labour is the major trade union centre in the Province representing some 700,000 trade unionists who together with their families make up an appreciable portion of the people of Ontario.

The Federation proposes that:

1. The power to regulate store hours be removed from municipalities and put under the provincial jurisdiction;

2. uniform legislation throughout the Province should be enacted allowing for only minimal variation for resort areas and for the pre-Christmas shopping period;
3. that exceptions to the legislation be made for the small family store, but the legislation should apply to those establishments that are part of a chain or association as spelled out in the Quebec Commercial Establishments Business Hours Act, June 1, 1970;
4. fines should be \$1,000 a day and should continue for each day that the law is broken.

National Retailers' Institute

The National Retailers' Institute represents leading operators of suburban department stores and suburban discount department stores, some firms with retail concessions in these stores, some food supermarket companies and some developers of suburban shopping centres.

Urban Development Institute

The Urban Development Institute is an independent non-profit industry association, whose members represent a complete cross-section of each of the major branches of real estate and building development industries.

The International Council of Shopping Centres

The I.C.S.C. is the trade association of the shopping centre industry. It is a non-profit association founded in 1957 and has a membership of 4,500 from 26 countries throughout the world.

These last three groups, the N.R.I., U.D.I. and I.C.S.C., all support a free competitive market system, and maintain that the laws of supply and demand will best regulate and establish the most beneficial hours of retailing for both consumers and retailers.

B. ANALYSIS OF LETTERS TO THE GOVERNMENT OF ONTARIO

The subject of "Uniform Store Hours" received a fair degree of public response as evidenced by the thousands of letters written to the Premier's Office or to M.P.P.s requesting Provincial legislation to introduce uniform store hours. Of these letters, the majority come from retail employers and employees, while a small percentage were received from consumers, who feared higher prices as a result of liberalized shopping hours.

A very negligible number of letters were received supporting the expansion of retail hours.

C. SUMMARY OF ARTICLES AND EDITORIALS

This summary is based on articles and editorials either collected by the press clipping service or referred to our attention from interested individuals or organizations. Of these, 66 per cent tend to support Provincial regulation of retail hours, while 10 per cent support the opposite point of view and 24 per cent of the articles resulted from such matters as Ministerial statements and do not indicate preference.

D. ANALYSIS OF LEGISLATIVE DEBATES AND PRIVATE MEMBERS
BILLS

The subject of Uniform Store Hours for retail establishments has been discussed sporadically in the Legislature over the past four years.

The latest significant contribution to the subject was on June 1, 1973 when Mr. Leonard M. Reilly, the Conservative M.P.P. representing Eglinton constituency, made a speech in the Legislature asking for Government action to regulate retail store hours.

Following Mr. Reilly's speech, Mr. Charles McIlveen, Conservative M.P.P. for Oshawa, introduced a private members Bill 175 for first reading on June 20, 1973, entitled "An Act to Provide for the Controlling of Hours in Commercial Establishments".

The Bill prescribes the hours that retail establishments may remain open, with specific exceptions: Monday to Wednesday 8 a.m. to 6 p.m., Thursday and Friday 8 a.m. to 9 p.m. and Saturday 8 a.m. to 5 p.m. It also states nine statutory holidays during which stores must remain closed. The penalty for person (s) found guilty of an offence would be a fine not exceeding \$1,000.

Prior to this Bill 175, Mr. Donald Patterson, Liberal M.P.P. for Essex South, introduced Bill 166 in June of 1972 and Bill 118 in May of 1973. Both these Bills were very similar to Bill 175 outlined above.

E. OTHER PERTINENT INFORMATION RELATING TO PUBLIC RESPONSE

The Ministry of Consumer and Commercial relations recently took a survey based on 1,500 people widely distributed throughout the province. When asked whether the Provincial Government or retailers and consumers should determine retail store hours from Monday to Saturday, respondents replied:

Provincial Government	45%
Retailers and Consumers	52%
Don't Know	3%
Total	<u>100%</u>

CHAPTER VII

OPTIONS

This chapter outlines five major options respecting uniform store hours:

1. to continue the existing system by which the Province empowers municipalities to regulate store hours by by-law;
2. to introduce Provincial uniform store hours legislation to closely regulate retail hours;
3. to introduce Provincial uniform store hours legislation in order to provide a broad regulatory framework which would permit most existing retail practices while avoiding unreasonable extension of hours and irrational competition.
4. to withdraw existing provisions governing store hours and permit the market to regulate itself.
5. to empower regional and metropolitan municipalities to determine retail hours within their boundaries.

OPTION 1

This option would continue the existing system by which the Province empowers municipalities to regulate the closing hours of retail outlets by by-law.

It has been mentioned above ¹, that under the existing system, municipalities can tailor retail closing by means of by-laws to suit their own particular needs.

Employee working hours are set by The Employment Standards Act which provides some employee protection.

1. Part II, Chapter 2, Section B

Advantages of Option 1

- The legislation and current practices are familiar to the public.
- It allows for variation between municipalities.
- It is a flexible system.
- It is convenient for the consumer.
- It is comparatively easy to administer.
- It permits the retail industry to set its hours with a minor degree of regulation.

Disadvantages of Option 1

- It results in some inter-municipal competition as regards retail closing hours. Often municipalities bordering a municipality with strict laws governing retail closing will extend store hours to encourage certain types of retailers to locate within their boundaries. During these extended hours, they draw customers and business away from the municipality with stricter laws.
- Some small independent retailers may be forced out of business by chain stores and large retailers with the resources to staff for extended hours.

Option 2

This option would introduce Provincial uniform store hours legislation to strictly regulate retail hours.

For example, stores would open on Monday, Tuesday and Wednesday, from 7:30 a.m. to 6:00 p.m.; on Thursday and Friday, from 7:30 a.m. to 9:30 p.m.; and, on Saturday, from 7:30 a.m. to 6:00 p.m. Stores would remain closed on Sunday and on statutory holidays with certain exceptions as permitted by Sunday observance legislation. From December 1 - 24, except Sundays, stores could open from 7:30 a.m. to 9:30 p.m.

Advantages of Option 2

- It would provide some protection to the small independent retailer.
- It would provide more regular hours for some retail employees.
- It would provide a maximum of seventy shopping hours a week for shoppers' convenience which is considerably longer than the forty hours a week that most people work.
- It would protect those retail employees who do not want to work in the evening or on holidays or on Sundays.

Disadvantages of Option 2

- It interferes with the natural flow of the market place by introducing another form of regulation of trade.
- It could reduce part-time jobs available in the retail industry.
- It would be contrary to the interests of stores in suburban shopping plazas many of whom do most of their business after 6:00 p.m.
- It would be contrary to the general trend in Ontario towards the liberalization of closing laws.

- It would be less convenient for working mothers and other persons who must work during the day.
- There would be no local option to permit municipalities to exercise their preference.
- Such provisions might require an elaborate administrative and enforcement system.

Option 3

This option would introduce Provincial uniform store hours legislation in order to provide a broad regulatory framework which would permit most existing retail practices while avoiding unreasonable extension of hours and irrational competition.

For example, this option might state that stores could remain open from 7.30 a.m. to 10 p.m. from Monday to Saturday with exemptions for those classes of stores selling items considered as "essential".

Advantages of Option 3

- It would permit retailers to set their hours within the broad 7.30 a.m. to 10 p.m. framework. Even though it would introduce a degree of uniformity into Provincial retail practices, it would permit enough variation to meet local requirements.
- It would be easy to administer.
- It would encourage the use of part-time help on evenings and Saturdays.
- The length of store hours permitted would be convenient for the consumer.

- It would prevent irrational competition whereby stores might remain open longer to try to force their competition out of business perhaps resulting in twenty-four hours a day retail opening in some cases.
- It would provide some protection to small independent retailers while allowing shopping centers to carry on, what is for them, essential evening retailing.
- It would ensure regular hours to most retail employees.

Disadvantages of Option 3

- The municipalities would no longer have the option of regulating retail hours.

Option 4

The fourth option would withdraw existing provisions governing store hours and permit the market to regulate itself.

Advantages of Option 4

- It would allow the market to regulate itself; retailers would set their own hours.
- It would be convenient for the consumer.
- It would involve no Government regulation, administration and enforcement.
- It could produce more part-time and overtime work in the retail industry.

Disadvantages of Option 4

- Some small independent retailers may be forced out of business by chain stores and large retailers with the resources to staff for longer hours.
- It could result in irrational competition in some areas with competitors trying to squeeze each other out of business by twenty-four hour opening.
- It could require retail employees to work irregular hours.

OPTION 5

This option would empower regional and metropolitan municipalities to determine retail hours within their boundaries.

Advantages of Option 5

- It is a flexible system allowing for variation of store hours among regional and metropolitan municipalities.
- It would avoid most inter-municipal competition as regards retail store hours.

Disadvantages of Option 5

- If the regional and metropolitan municipalities opt to allow the market to regulate itself, some small independent retailers may be forced out of business by chain stores and large retailers with the resources to staff for longer hours.
- Some retail employees would have to work irregular hours.

APPENDIX I

Explaining items under recommendation five, Option 2,
Chapter VII, Part I.

- a) Maximum number of employees: The Law Reform Commission refers to a number of acts in force in various jurisdictions in Canada which specify a maximum of three persons for the entire day (including employers and employees) in establishments exempted from the closing restrictions. The Commission maintains that this standard would be relatively easy to enforce.
- b) Maximum square footage: This standard also is relatively easy to enforce. The Commission recommends that this limitation be applied only to the sales area rather than to sales and stock area. A suggested maximum size of the sales area is two thousand square feet.
- c) Product or Trade Designation: The Commission tends to favour trade designation as opposed to produce designation because of the inherent difficulties in coming up with a specific list of products that will satisfy most consumers' notions of what is "essential". Trade designation allows for more flexibility to meet changes in consumer needs. Yet this requires quantifications as to "principal" trade such as exists in the "Municipal Act" to avoid the problems of "scrambled merchandising".
- d) Stated hours of operation: The Commission believes that there should be stated operating hours which would be fixed for all commercial establishments exempted from the general prohibition to operating on Sundays.
- e) There are certain facilities crucial to specific types of essential Sunday selling which might be limited as an effective method of regulation and containment, for example:
 - 1. for retail gasoline outlets, restrict the number of pumps in use,
 - 2. for variety, convenience and jug milk stores, restrict the number of cash registers and check out areas or the cubic footage of refrigeration space.

f) Licence: This could be attempted on a province wide or municipal basis. Any number of the above standards could be applied to a class of "essential" stores in a manner best suited for that particular class of operations. Prosecutions could then be brought for operating without a licence, not for violating a standard. Licensing may require a fairly elaborate and extensive administration, but this can be partially overcome by prescribing specific standards for each class of essential selling in the legislation itself for the benefit and direction of the licensing body.

APPENDIX 2

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Appendix 2

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